APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Charlie Clary, Chair

Meeting Packet
Tuesday, April 13, 2004
9:15 a.m. – 11:15 a.m.
301 Capitol

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Senator Clary, CHAIR

DATE: Tuesday, April 13, 2004
TIME: 9:15 a.m. -- 11:15 a.m.
PLACE: The *Jerry Thomas Committee Room,* 301 Capitol

(MEMBERS: Senators Atwater, Bullard, Dockery and Lawson)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 2016 Diaz de la Portilla (Identical H 0979, Similar H 0509)	Home Inspection Services; provides for licensure of persons providing home inspection services; provides legislative intent & definitions; creates Florida Home Inspection Advisory Council; provides licensure requirements, including grandfathering provisions; provides exemptions; requires liability insurance; exempts from duty to provide repair cost estimates; provides for reciprocity; provides continuing education requirements, etc. Creates 501.935. RI 03/17/04 FAVORABLE FT 03/25/04 FAVORABLE WITH AMEND 2 AGG AP	
2	CS/SB 2270 Banking and Insurance / Banking and Insurance	Workers' Compensation; revises standards for coverage in subplans "A," "C," & "D" of plan; provides surcharges & other incentives for depopulation from subplan "D"; provides minimum standards for issuance of policy; provides for assessments against policyholders to fund deficits in subplan "D"; provides legislative intent to create state workers' compensation mutual fund under certain conditions, etc. Amends 627.311. BI 03/10/04 Temporarily postponed BI 03/17/04 Temporarily postponed BI 03/24/04 Not considered BI 03/31/04 CS AGG AP	

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/CS/SB 2954 Commerce, Economic Opportunities, and Consumer Services / Alexander et al (Similar H 1307, Compare H 0039, H 1661, CS/S 1664, S 2652)	Migrant Labor; authorizes Executive Office of Governor to advise & consult concerning improvements in working conditions of migrant workers; requires Legislative Commission on Migrant & Seasonal Labor to make appointments & hold its first meeting; authorizes Agriculture & Consumer Services Dept. to cooperate & enter into agreements with other state agencies; creates "Fla. Agricultural Worker Safety Act"; provides for administration by dept., etc. Amends FS. AG 03/18/04 WITHDRAWN CM 03/18/04 WITHDRAWN JU 03/18/04 WITHDRAWN CJ 03/18/04 WITHDRAWN FT 03/18/04 WITHDRAWN AGG 03/18/04 WITHDRAWN AP 03/18/04 WITHDRAWN RC 03/18/04 WITHDRAWN AG 03/24/04 CS CM 03/30/04 CS/CS AGG AP	
4	CS/CS/SB 0160 Judiciary / Lynn et al (Linked S 2826, Similar H 1759, Compare H 1761)	Child Support; redefines term "support order" for purposes of specified provisions, to include order of administrative agency; provides for continuation of support obligation at same amount after emancipation until any arrearage is satisfied; provides for insurance claim data exchange; authorizes insurer to participate in data match system; requires DOR, with assistance of DOC, to identify inmates with child support obligations, etc. Amends FS. CF 02/18/04 CS JU 03/30/04 CS/CS FT 04/02/04 WITHDRAWN AGG AP	
5	SB 0338 Constantine	Brownfield Loan Guarantees; revises certain restrictions on investing funds maintained in Nonmandatory Land Reclamation Trust Fund; provides for schedule for legislative review of Brownfield Areas Loan Guarantee Program. Amends 376.86. NR 02/17/04 FAVORABLE WITH AMEND 1 AGG AP	

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 0562 Regulated Industries / Bennett (Similar H 1093)	Electrical & Alarm System Contracts; requires certificateholders & registrants to have continuing education in preventing false alarms; requires additional criminal background check; removes exemption from training requirements for persons who only perform sales; provides continuing education requirements for burglar alarm system agents; revises qualifications for fire alarm system agents; requires second alarm-verification call if first call is unanswered, etc. Amends Ch. 489. RI 01/22/04 CS CJ 03/03/04 FAVORABLE WITH AMEND 1 AGG AP	
7	CS/SB 1712 Agriculture / Argenziano et al (Similar H 1161)	Agricultural Economic Development; provides cause of action for landowners aggrieved by certain changes to agricultural land use; provides requirements re purchase of lands for which agricultural lease exists; specifies that water source options be considered for self-suppliers; requires water management districts to inform landowners of option for consumptive use permit; provides for memoranda of agreement re qualification of agricultural related exemptions. Amends FS. AG 03/04/04 CS NR 03/16/04 FAVORABLE WITH AMEND 4 RI 03/24/04 WITHDRAWN AGG AP	
8	CS/SB 2822 Agriculture / Argenziano (Similar H 1119, Compare H 0595, CS/S 1300)	Private Investigative Services; increases minimum age required for certain licensees; revises agency insurance requirements & limits such requirements to security agencies; requires Agric. & Consumer Services Dept. to establish by rule criteria for approval of continuing education courses & providers & form for certificates of completion; provides examination fees for private investigators & private investigator interns, etc. Amends Ch. 493. AG 03/24/04 CS FT 04/01/04 FAVORABLE AGG AP	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

DATE: Tuesday, April 13, 2004 TIME: 9:15 a.m. -- 11:15 a.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/CS/SB 2026 Governmental Oversight and Productivity / Pruitt et al (Similar H 0851)	Professions Regulation/DBPR; revises Management Privatization Act; authorizes DBPR, pursuant to board, commission, or council request, to establish & contract with nonprofit corporation to perform support services specified pursuant to contract for applicable profession; requires development of business case subject to executive & legislative approval; revises requirements for monitoring of continuing education compliance, etc. Amends Ch. 455, 481.205. RI 03/17/04 CS GO 03/30/04 CS/CS AGG AP	
10	CS/CS/SB 1104 Comprehensive Planning / Dockery et al (Similar 1ST ENG/H 0293, Compare CS/S 2188)	Water Resources; requires local governments to address water supply sources necessary to meet projected water use demand included in comprehensive plans; requires local governments to update work plans for building water supply facilities to incorporate revised regional water supply plans; provides legislative findings & intent re landscape irrigation design, etc. Amends Chs. 163, 373; creates 373.2234. NR 03/16/04 CS CP 03/29/04 CS/CS AGG AP	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2016

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Home Inspection Services

DATE: April 12, 2004 REVISED: 03/25/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Favorable
2.	Fournier	Johansen	FT	Fav/2 amendments
3.	DeLoach	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

The bill provides for the licensure and regulation of home inspectors under the Department of Business and Professional Regulation (department). The intent of the bill is to ensure that consumers of home inspection services can rely on the competence of home inspectors as determined by educational and experience requirements and testing. The bill provides for a Florida Home Inspection Advisory Council whose mission is to provide industry input to the department and assist the department in developing standards of practice and rules pursuant to the bill. It exempts certain licensed professionals from licensure and provides license criteria, penalties, discipline, fees and other provisions usually associated with the licensure of professionals under the department.

This bill creates the following sections of the Florida Statutes: 501.935.

II. Present Situation:

Current Florida law does not license or regulate the practice of home inspectors. There are an estimated 3,000 home inspection entities in Florida.[1] Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

[1] The department obtained this information from the Florida Association of Building Inspectors.

The existence and level of home inspector regulation varies from state to state[2]. Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.[3] In Alabama the rules require individuals performing home inspections to be licensed by the Alabama Building Commission.[4] The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.[5] The Alabama law also outlines educational and experiential requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.[6]

III. Effect of Proposed Changes:

Intent

Paragraph (1) of s.501.935, F.S., is created to provide that the intent of the section is to require the licensing of home inspectors and to ensure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing.

Definitions

Paragraph (2) of s.501.935, F.S., is created to define the following terms:

- "Department" means the Department of Business and Professional Regulation.
- "Home" means any residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- "Home inspector" means any person who provides or offers to provide a home inspection for a fee or other compensation.
- "Home inspection" means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

Standards of Practice

Paragraph (3) of s.501.935, F.S., is created to require the department, in consultation with the Florida Home Inspection Advisory Council, to adopt by rule the minimum standards of practice

[2] The National Association of Certified Home Inspectors (Nachi) reports that there are at least 17 states that license home inspectors.
[3] Ga. Code Unann. s. 8-3-331 (2001).
[4] Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03.*
[5] *Id.* at *Chapter 170-x-25-02.*
[6] Al. Code s. 34-14B-1 – 9 (1975).

for home inspectors, which shall be based on nationally recognized industry standards of practice for home inspectors.

Florida Home Inspection Advisory Council

Paragraph (4) of s.501.935, F.S., is created to require the department to appoint a Florida Home Inspection Advisory Council. It consists of eight members who are home inspectors having a minimum of five years experience each, one consumer member, and one nonvoting member from the staff of the department. The mission is to provide industry input to the department and assist the department in developing standards of practice and rules pursuant to this section. It shall assist the department in the review of complaints filed against home inspectors and shall meet at least three times each year.

Exemptions

Paragraph (5) of s.501.935, F.S., is created to provide exemptions to the bill regarding any valuation condition, report, survey, evaluation, or estimate rendered within the scope of practice authorized by the license, except when the person is operating within the scope of this section to:

- A construction contractor licensed under ch. 489, F.S.
- An architect licensed under ch. 481, F.S.
- An engineer licensed under ch. 471, F.S.
- A building code administrator, plans examiner, or building code inspector licensed under part XII of ch. 468, F.S.
- A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of ch. 475, F.S.
- An inspector whose report is being provided to and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration.
- An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under ch. 482, F.S.
- A firesafety inspector certified under s. 633.081, F.S.
- An insurance adjuster licensed under part VI of ch. 626, F.S.
- An officer appointed by the court.

License Criteria

Paragraph (6) of s.501.935, F.S., is created to provide that:

- A person may not provide or represent himself or herself as able to perform a professional home inspection for compensation unless the person is licensed in accordance with this section.
- A business entity may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity is licensed in accordance with this section.
- A business entity may not use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services unless each of

the home inspectors employed by the business entity is licensed in accordance with this section.

Eligibility

Paragraph (7) of s.501.935, F.S., is created to provide that to be eligible for a license as a home inspector, an applicant must:

- Be of good moral character.
- Have successfully completed high school or its equivalent.
- Have completed a course of study of no less than 90 hours that covers all of the following components of a home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.
- Pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the department.

Grandfathering

Paragraph (8) of s.501.935, F.S., is created to provide that for the first year after the enactment of this section, to be eligible for a license as a home inspector, an applicant must:

- Be of good moral character.
- Have successfully completed high school or its equivalent.
- Have been engaged in the practice of home inspection for compensation for not fewer than three years prior to the effective date of the act.
- Have performed not fewer than 250 home inspections for compensation.
- Pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the department.

Prohibited Acts; Penalties

Paragraph (9) of s.501.935, F.S., is created to provide that a home inspector, a company that employs a home inspector, or a company that is controlled by a company that also has financial interest in a company employing a home inspector may not:

- Perform or offer to perform, prior to closing, for any additional fee, any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This paragraph does not apply to a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract.
- Inspect for a fee any property in which the inspector or the inspector's company has any financial or transfer interest.
- Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, or any broker or agent therefore, for the referral of any business to the inspector or the inspection company.

- Accept an engagement to make an omission or prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings or the close of the escrow.

This section also provides that any person who violates any provision of this subsection commits a misdemeanor of the second degree.

Complaints; Discipline

Paragraph (10) of s.501.935, F.S., is created to provide that:

- Complaints concerning home inspectors are referred to the department.
- In lieu of investigation, the department may place in a registry a copy of a complaint received by the department against a licensed home inspector, the inspector's response to the complaint, and a copy of any records of the department concerning the complaint.
- The department shall provide to the home inspector a copy of the complaint no later than 30 days after the date the complaint is received by the department alleging that the inspector has engaged in conduct that is grounds for discipline.
- After receiving a copy of the complaint, the home inspector may place in a registry a statement within 30 days that describes the inspector's view of the correctness or relevance of any of the information contained in the complaint.
- The department shall make the complaint and the home inspector's response to the complaint available to the public.
- The department shall remove all complaints against and other information concerning a home inspector from the registry if, for a period of 2 years from the date of the most recent complaint filed in the registry, no further complaints have been filed against the inspector.
- Unworthy or frivolous complaints shall be discarded and shall not be retained.
- The department may make investigations or conduct hearings pursuant to chapter 120 to determine whether a violation of the section has occurred.
- The department may refuse to grant a home inspector license or may suspend or revoke a home inspector license upon proof to the satisfaction of the department that the applicant or licensee has participated in an unfair business practice relating to the provision of home inspection services.

Fees

Paragraph (11) of s.501.935, F.S., is created to require the department by rule to establish fees for licensure, renewal of licensure, and other services provided by the department under this section. The fees may not exceed amounts sufficient to defray the administrative costs to the state under this section and shall be comparable to those charged for other similar, regulated professions.

Insurance

Paragraph (12 of s.501.935, F.S., is created to require that a home inspector maintain a commercial general liability insurance policy in an amount of not less than $300,000.

Repair Cost Estimates

Paragraph (13) of s.501.935, F.S., is created to provide that home inspectors are not required to provide estimates related to the cost of repair of the inspected property.

Reciprocity

Paragraph (14) of s.501.935, F.S., is created to require the department to issue a home inspector license to any person who holds a valid license, certificate, or registration issued by another state, territory, or possession of the United States or the District of Columbia that has standards and licensing requirements substantially equivalent to or exceeding those of this state, as determined by the Florida Home Inspection Advisory Council, upon payment of the fee imposed and submission of the written application provided by the department.

Continuing Education Requirements

Paragraph (15) of s.501.935, F.S., is created to require that a home inspector complete 14 hours of department-approved continuing education during each calendar year in order to maintain his or her license.

Statute of Limitations

Paragraph (16) of s.501.935, F.S., is created to provide that ch. 95, F.S., governs when an action to enforce an obligation, duty, or right arising under the section must be commenced.

Enforcement of violations

Paragraph (17) of s.501.935,F.S., is created to provide that any violation of the section constitutes a deceptive and unfair trade practice, punishable as provided in part II of ch. 501, F.S.

Effective date

The act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Licensure fees are to be set by department rule.

B. Private Sector Impact:

Home inspectors will incur the cost of licensure if they wish to continue to provide home inspection services to the public.

C. Government Sector Impact:

According to the department, there will be an impact to the Professional Regulation and Service Operations programs associated with administering a council, testing and licensing individuals conducting investigations, and administrative overhead. The implementation over two years will require 4.0 FTE positions and $1,192,478.

The department determined that there are approximately 3,000 home inspection entities in Florida.[7] The department estimated that 1.0 FTE position (Government Analyst II) and $79, 812 will be required to provide support to the newly created council during the first year. These costs and the recurring costs ($76,765 and $78,325 in the following years) include council members' compensation, travel, and miscellaneous start-up costs for the first year.

In addition, 2.0 FTE positions (Investigation Specialist II) and $131,726 will be required to support the compliance and enforcement functions during the first year. The recurring costs in the following years are $94,791 and $97,043.

Service Operations Program: An additional 1.0 FTE position (Regulatory Specialist II) and $80,924 will be required for the Central Intake and Customer Contact Center to handle the increased number of licensees during the first year. The recurring costs in the following years are $37,335 and $38,249. An amount of $350,000 will be required for the development and implementation of exam testing. The recurring cost for this will be $75,000 per year.

[7] *Supra* note 1.

VI. Technical Deficiencies:

According to the department, the bill provides that the department "may" make investigations or conduct hearings pursuant to ch. 120, F.S. The department is a state administrative agency and, as such, is required to conduct all of its activities pursuant to ch. 120, F.S. The bill also provides that the department shall make the complaint and inspector response available to the public. However, the bill makes no provisions for a probable cause procedure pursuant to ch. 455, F.S. Pursuant to s. 455.225, F.S., disciplinary proceedings are exempt from ss. 119.07(1) and 286.011, F.S., absent a finding of probable cause.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Finance and Taxation:
This amendment provides that a certified energy auditor performing an energy audit conducted under ch. 366, F.S., or rules adopted by the Public Service Commission is not required to comply with the provisions of this statute.

#2 by Finance and Taxation:
This amendment provides that a master septic tank contractor licensed under part III of chapter 489. F.S., is not required to comply with the provisions of this statute.

Bill No. SB 2016

Amendment No. 1 100510

CHAMBER ACTION

Senate House

The Committee on Finance and Taxation recommended the following amendment:

Senate Amendment

On page 4, between lines 7 and 8,

insert:

(k) A certified energy auditor performing an energy audit of any home or building conducted under chapter 366 or rules adopted by the Public Service Commission.

Bill No. SB 2016

Amendment No. 2 900122

CHAMBER ACTION

Senate House

The Committee on Finance and Taxation recommended the following amendment:

Senate Amendment

On page 4, between lines 7 and 8,

insert:

(k) A master septic tank contractor licensed under part III of chapter 489.

Bill No. SB 2016

Amendment No. 1

873482

CHAMBER ACTION

Senate | House

04 APR -8 PM 1:42

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Senator Lawson moved the following amendment:

Senate Amendment (with title amendment)

On page 8, line 26,

and insert:

Section 2. For the 2004-05 fiscal year, the sum of $642,463 is appropriated from the Professional Regulation Trust Fund, and four positions are authorized, to the Department of Business and Professional Regulation for the purpose of conducting licensing and regulatory activities associated with home inspection services.

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 17, after the semicolon

insert:

Bill No. SB 2016

Amendment No. 1 873482

providing an appropriation and authorizing positions;

2

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2270

SPONSOR: Banking and Insurance Committee

SUBJECT: Workers' Compensation Joint Underwriting Association

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	Kynoch	Hayes	AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2270 provides a one-time appropriation of $35 million from the Workers' Compensation Administration Trust Fund in the Department of Financial Services for transfer to the Florida Workers' Compensation Joint Underwriting Association (JUA) to fund the estimated $36 million deficit in subplan D for calendar year 2004 and provides the following changes relating to subplan D and the JUA:

- Requires the JUA to charge policyholders in subplan D an annual fee of $475 to cover costs of administration and fraud prevention.
- Prohibits the JUA from issuing a subplan D policy to an employer unless the employer has at least one non-exempt full-time employee in the governing class code (the employer's class code) and has a payroll at least equal to the minimum hourly wage for one year at 40 hours per week. This effectively prohibits the JUA from issuing minimum premium policies, or zero payroll policies in subplan D. A minimum premium policy would still be available from subplan C at actuarially sound rates.
- Provides that a policyholder is no longer eligible for subplan D if during any 2-year period, it incurs two or more indemnity or medical claims and has incurred losses greater than $5,000. If this claim trigger is reached at anytime during a 2-year period, the employer is immediately ineligible for subplan D. The employer remains ineligible for subplan D until it has 3 years of loss history with no indemnity and no medical claims exceeding 50 percent of premium.
- Maintains the current caps on subplan D surcharges over voluntary market premiums (25 percent for small employers and 10 percent for charitable organizations) for the first three years an employer is in subplan D. However, the surcharge is increased to 40 percent for the employer's 4th renewal, 60 percent for the 5th renewal, 80 percent for the 6th renewal, and 100 percent for the 7th and subsequent renewals.

- Provides that an employer may elect coverage in any subplan of the JUA for which the employer is eligible.
- Exempts the JUA from the premium tax and assessments for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund.
- Provides that in the event a deficit exists in subplan D, after the implementation of the provisions of this bill, subplan D policyholders would not be subject to assessment for an additional premium. Any deficit would be funded by an assessment, not to exceed 1 percent of premium, on all workers' compensation policies in the voluntary market for a period of 1 year.
- Provides legislative intent to create a state workers' compensation mutual fund if workers' compensation coverage is not generally available and affordable to small employers by October 1, 2005. In order to make this determination, the bill establishes the Workers' Compensation Insurance Market Evaluation Committee consisting of 1 member appointed by the Governor and 2 members appointed by each of the respective presiding officers of the Legislative Branch. If the Legislature determines that workers' compensation coverage is not generally available and affordable to small employers in Florida, the Legislature intends to create a state mutual fund as a non-profit entity for the benefit of its small employer policyholders. The state mutual fund would compete with private insurers. It is intended that the state appropriate adequate initial capitalization for the fund and that the fund be subject to the same financial and other requirements as apply to an authorized insurer.

Senate Bill 50-A, enacted in the 2003 Special Session A, created subplan D in the Florida Workers' Compensation Joint Underwriting Association (JUA) and capped premiums at 25 percent above the voluntary market premium for small employers and 10 percent above the voluntary market premium for charitable organizations meeting certain criterion.[1] The bill also provided these policies are assessable, meaning that any deficit in the subplan must be funded by assessing the JUA policyholders for additional premiums.

Since these capped premiums are not actuarially sound, the JUA recently reported that subplan D incurred a $9,864,901 deficit, as of December 31, 2003, and has projected a deficit of more than $36 million, as of December 31, 2004, if additional funding is not provided. Given the limited financial resources of many small employers in the subplan, as well as the history of largely unsuccessful attempts at collecting assessments from members of insolvent group self-insurance funds, the likelihood of collecting the total assessment is doubtful.

This bill substantially amends section 627.311 of the Florida Statutes.

II. Present Situation:

Due to growing concerns regarding the availability and affordability of workers' compensation insurance in Florida, legislation was enacted in 2003 that substantially revised many aspects of the workers' compensation law.[2] The changes provided in Senate Bill 50-A were designed to reduce costs, expedite the dispute resolution process, provide greater enforcement and

[1] Senate Bill 50-A, ch. 2003-412, L.O.F.
[2] Id.

compliance authority for the Division of Workers' Compensation to combat fraud, provide affordable coverage for small employers, revise certain indemnity benefits, and increase medical reimbursement fees for physicians and surgical procedures. Restrictions on exemptions in the construction industry, enacted by Senate Bill 50-A, were expected to increase the Florida Workers' Compensation Joint Underwriting Association (JUA) volume even further, prompting the Legislature to address affordability of JUA coverage. Because of this legislation, rates for new and renewal policies that are effective on or after October 1, 2003, were reduced by 14.0 percent in the voluntary market and the JUA.

The Florida Workers' Compensation Joint Underwriting Association

The JUA's Board is comprised of nine members consisting of three members appointed by the Financial Services Commission; two members representing the top 20 domestic insurers writing workers' compensation in Florida; two members representing the top 20 foreign insurers writing workers' compensation in Florida; one person appointed by the largest property and casualty insurance agents' association in Florida; and the consumer advocate for the Department of Financial Services.

Under Senate Bill 50-A, an employer with an experience modification factor of 1.10 or less and either employs 15 or fewer employees or is a charitable organization that is exempt from federal income taxes pursuant to s. 501(c)(3) of the Internal Revenue Code is eligible for subplan D. Prior to the passage of Senate Bill 50-A, premiums for coverage in the JUA were approximately three to four times the premiums charged in the voluntary market. The bill caps rates for subplan D at a 25 percent surcharge and a 10 percent surcharge for small employers and certain charitable organizations, respectively.[3] The JUA indicated that their premiums for subplan D should be 2.57 times higher than the voluntary market premium to remain actuarially sound; hence, projected subplan D would likely incur a deficit.

Since subplan D policies are assessable, any deficits in the subplan are to be assessed against the policyholders in that subplan. On February 27, 2004, the JUA notified the Office of Insurance Regulation (OIR) that subplan D incurred a deficit of $9,864,901 in 2003. According to the JUA's projected annual financial statements, subplan D will incur a deficit of more than $36 million as of December 31, 2004, if no additional funding is provided. The JUA also indicated in this memorandum that it would be submitting a plan to the OIR to eliminate the deficit based on an assessment of subplan D policyholders. As of February 29, 2004, there were 2,534 policyholders in subplan D. The JUA is required to file this plan within 90 days of the deficit notification. The collection of the full amount of any such assessments is doubtful, given the limited financial resources of many small employers, as well as the history of largely unsuccessful attempts at collecting assessments from members of insolvent group self-insurance funds.

According to the OIR, the JUA may recognize a statutory deficit by the filing of any quarterly or annual financial report.[4] Each authorized insurer, including the JUA, is required to submit the annual statement and the audited financial report for the prior year to the OIR by March 1 and

[3] JUA Subplan D Rate Filing to Implement Senate Bill 50-A, dated June 27, 2003.
[4] Memorandum from Kevin McCarty, Director of the Office of Insurance Regulation, dated February 11, 2004.

June 1, respectively.[5] In addition, the JUA is required to submit an independent actuarial certification of the JUA's operation for the prior year by June 1 of each year. If the expenses exceed the income for prior years, the certification is subject to review and approval by the OIR before it is finalized. Section 627.311(5), F.S., provides two mechanisms for triggering an assessment. First, the JUA is authorized to levy an assessment against subplan D policyholders, subject to verification by the OIR. The section also provides that whenever a deficit exists, as documented by an actuarial report or other communication from the JUA, the JUA must submit a program to the OIR within 90 days that eliminates the deficit within a reasonable period. The law provides that such a program could include a proposed assessment or increased premiums; however, the premiums are capped in subplan D.

Because of the creation of subplan D and the caps on premiums, ongoing concerns exist regarding the financial impact of subplan D on the JUA, the magnitude of the statutory deficit and policyholder assessments associated with the subplan, and any resultant solvency issues. The Senate Banking and Insurance Committee staff interim report entitled, *Review of the 2003 Workers' Compensation Act*,[6] included legislative recommendations to alleviate and address the deficit in the JUA and to address long-term solvency issues. The staff report recommended that the Legislature should consider providing a one-time budget transfer from the Workers' Compensation Administration Trust Fund and exempting the JUA from the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund assessments. To address long-term solvency issues and the overall viability of the subplan, the Legislature should consider revising the premium structure of subplan D and the assessment methodology.

Recently, the JUA Board of Governors (Board) issued legislative recommendations to address solvency and assessment issues that are summarized below:[7]

> *Funding the Existing Deficit.* If an assessment is to be avoided, measures must be adopted to fund the existing deficit. The Board recommends that the Legislature consider authorizing a loan from the Workers' Compensation Administration Trust Fund (WCATF) to the JUA to fund the existing deficit in subplan D.
>
> *Caps on Rates.* There are several possible solutions to address the probability of the continuing growth of subplan D deficits. The Board feels constrained to note that the elimination of artificial rate caps and a return to the requirement that the Board maintain actuarially sound rates in all subplans would likely return the JUA to a more stable financial condition.
>
> *Depopulation Incentives.* The depopulation of the JUA is unquestionably in the best interests of JUA policyholders. Providing additional encouragement and incentives to the voluntary market to take-out and keep-out residual market business seems to be the most effective way of doing that. Current law provides that voluntary market carriers may take policies out of subplan D, charging the policyholder rates no greater than the JUA rates in subplan D for a period of two years after the take-out. Policies taken out of the JUA in

[5] Section 624.424, F.S. (2003).
[6] Interim Project Report 2004-110, issued January 2004.
[7] Florida Workers' Compensation Joint Underwriting Association, Inc. *Statement of the Board of Governors Regarding 2004 Legislative Activities*, dated February 13, 2004.

this manner do not count against so-called "consent to rate" limitations contained in s. 627.171, F.S. The Board suggests consideration be given to expanding this incentive program.

The Board recommends expanding the current depopulation program to all JUA subplans. Additionally, the Board suggests that the two-year consent to rate moratorium be extended to five years, so that voluntary market carriers could continue to write the take-out business for five years, so long as the policyholder and the carrier were willing to continue doing business under that rating arrangement.

Policyholder Subplan Election. Under current law, an employer who qualifies for subplan D must be written in subplan D, and may not voluntarily choose to participate in subplan C. Although rates in subplan D are lower than subplan C, the JUA believes, if given a choice, many employers would choose the higher, but actuarially sound rates of subplan C over the lower subplan D rates, which expose them to almost certain assessments. The Board suggests that the Legislature consider revising the JUA law to permit eligible policyholders to choose between subplan C and subplan D.

Exemption from Certain Taxes and Assessments. The Board suggests that the Legislature consider granting an exemption to the JUA for the premium tax and assessments to the WCATF and the Special Disability Trust Fund (SDTF). Because the JUA is entitled to offset WCATF payments against its premium tax obligations, the JUA has not paid premium taxes. From 1994 through 2003, the JUA paid more than $19 million in WCATF and SDTF assessments.

Escheat Laws. Under Florida's escheat laws, if the JUA owes unearned premium, producer fees or claim payments to a policyholder, producer, claimant, or provider; and it is unable to locate the payee after making a diligent effort, then the money is remitted to the State of Florida as unclaimed property. Although a relatively small amount of money is involved, the Board suggests that the Legislature provide for an exception to the escheat laws, which would allow the JUA to retain these funds.

Other Measures. The Board recognizes that it cannot now predict the direction the Legislature may wish to take on matters relating to the JUA. The JUA could be asked to provide input on proposals that are not contemplated in this statement. For example, the Legislature might prefer a short-term approach to addressing the subplan D deficit. In that case, it might be important for the JUA to suggest that the Legislature also consider clarifying statutory language regarding assessments.

To assist the Legislature in further addressing the impact of the act on the JUA and the availability and affordability of coverage, the law requires the JUA to submit a report to the Legislature no later than January 1, 2005, which addresses the following issues:

- projected surpluses or deficits and possible means of providing funds to ensure solvency of the plan;
- effectiveness of the law in improving the availability of coverage in the state; and

- Legislative recommendations to improve availability of coverage in the voluntary and residual market.

Workers' Compensation Administration Trust Fund

The Workers' Compensation Administration Trust Fund was established to fund all expenses associated with administering the provisions of ch. 440, F.S.[8] This includes funding the Division of Workers' Compensation in the Department of Financial Services, administering the payment of supplemental benefits payments for certain injured workers, and providing funding for ch. 440, F.S., programs administered by Office of the Judges of Compensation Claims, the Department of Education, the Agency for Health Care Administration, and the Department of Business and Professional Regulation. [9]

The total expenses of administering ch. 440, F.S., are funded by assessing carriers writing workers' compensation, self-insurers, and commercial self-insurance funds. The assessment is capped at 2.75 percent.[10] The basis of the calendar-year assessment is the net premiums collected by carriers and the amount of premiums calculated by the Department of Financial Services for self-insured employers. Presently, the assessment is 1.50 percent for calendar year 2003-2004.

III. Effect of Proposed Changes:

Section 1 amends s. 627.311, F.S., relating to the Florida Workers' Compensation Joint Underwriting Association (JUA), to revise eligibility requirements for subplan D and exempt the JUA from premium tax under s. 624.509, F.S., and assessments for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund under ss. 440.51 and 440.491, F.S., respectively. The section also provides the following changes:

Annual Administrative Fee for Subplan D Policyholders
Requires the JUA to charge policyholders in subplan D an annual fee of $475 to cover costs of administration and fraud prevention. Currently, this fee is charged by the JUA for all plans except subplan D. The fee may be increased by the JUA Board of Governors, with the approval of the Office of Insurance Regulation, pursuant to a rate filing reflecting increased costs of administration and fraud prevention.

Elimination of Minimum Premium Policies in Subplan D
Prohibits the JUA from issuing a subplan D policy to an employer unless the employer has at least one non-exempt full-time employee in the governing class code (the employer's class code) and has a payroll at least equal to the minimum hourly wage for one year at 40 hours per week. This effectively prohibits the JUA from issuing minimum premium policies, or zero payroll policies in subplan D. A minimum premium policy would still be available from subplan C at actuarially sound rates.

[8] Section 440.50, F.S. (2003).
[9] The Special Disability Trust Fund created under s. 440.49, F.S., is a second-injury fund that is funded by a separate assessment on self-insured employers and carriers.
[10] Section 440.51, F.S. (2003).

Ineligibility for Subplan D if Certain Claims are Incurred
Provides that a policyholder is no longer eligible for subplan D if during any 2-year period, it incurs two or more indemnity or medical claims and incurred losses greater than $5,000. If this claim trigger is reached, the employer is immediately ineligible for subplan D. The employer remains ineligible for subplan D until it has 3 years of loss history with no indemnity and no medical claims exceeding 50 percent of premium. The policyholder could be placed in another subplan if the policyholder meets the eligibility criteria for such subplan.

Rates in Subplan D
Maintains the current caps on subplan D surcharges over voluntary market premium (25% for small employers and 10 percent for charitable organizations) for the first three years an employer is in subplan D. However, the surcharge is increased to 40 percent for the employer's 4th renewal, 60 percent for the 5th renewal, 80 percent for the 6th renewal, and 100 percent for the 7th and subsequent renewals.

Policyholder Choice of Subplans
Provides that an employer may elect coverage in any subplan of the JUA for which the employer is eligible.

Assessments to Fund Deficits in Subplan D
Provides that in the event a deficit occurs in subplan D, after the implementation of the provisions of this bill, subplan D policyholders would not be subject to assessment for an additional premium. Any deficit would be funded through an assessment, not to exceed 1 percent of premium, on workers' compensation policies written in Florida. The assessment would be levied on all new and renewed workers' compensation policies in the voluntary market for a period of 1 year following the effective date of the assessment. Insurers would be responsible for collecting this assessment from policyholders and remitting the assessment to the JUA. Insurers would be liable for all collected assessments and would treat the failure of an insured to pay an assessment as a failure to pay premium. An insurer would not be liable for uncollectible assessments.

Prohibition on Affiliated Persons Receiving Coverage in the Voluntary Market
Provides that an affiliated person of any person who is delinquent in the payment of premiums, assessments, penalties, or surcharges to the JUA is ineligible for coverage in the voluntary market. The term, affiliated person, is defined to include certain entities or persons with common ownership or control. This provision is designed to prevent persons that are delinquent in making payments to the JUA from obtaining coverage in the voluntary market through an affiliated person. The current law provides that a person who is delinquent in payments to the JUA is ineligible for coverage in the voluntary market. The current law could be circumvented by obtaining coverage through a spouse or another business entity which would be prohibited under this provision.

Workers' Compensation Insurance Market Evaluation Committee
Provides legislative intent to create a state workers' compensation mutual fund if workers' compensation coverage is not generally available and affordable to small employers by October 1, 2005. In order to make this determination, the bill establishes

the Workers' Compensation Insurance Market Evaluation Committee consisting of 1 member appointed by the Governor and 2 members appointed by each of the respective presiding officers of the Legislative Branch. The committee must meet monthly and report quarterly on the status of the workers' compensation market. If the Legislature determines that workers' compensation coverage is not generally available and affordable to small employers in Florida, the Legislature intends to create a state mutual fund as a non-profit entity for the benefit of its small employer policyholders. The state mutual fund would compete with private carriers and would be charged with the public mission of customer service, quality loss prevention, timely claims management, active fighting of fraud, and compassionate care for injured workers, at the lowest cost consistent with actuarially sound rates. It is further intended that state appropriate adequate initial capitalization for the fund and that the fund be subject to the same financial and other requirements as apply to an authorized insurer.

Section 2 provides a one-time appropriation of $35 million from the Workers' Compensation Administration Trust Fund in the Department of Financial Services for transfer to the Florida Workers' Compensation Joint Underwriting Association to provide funding for the deficit incurred in subplan D. This appropriation is to be transferred no later than July 31, 2004.

Section 3 provides that this act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Florida Workers' Compensation Joint Underwriting Association (JUA)
The JUA states it could receive a gift of up to $26 million without incurring a significant tax liability in 2004. The tax liability attributable to a transfer in excess of this amount may constitute taxable income. This statement is based upon a cursory review of the

JUA's potential tax position formulated using current projections and the assumption that no further revisions would be made.

Subplan D Policyholders
The $35 million appropriated from the Workers' Compensation Administration Trust Fund in the Department of Financial Services for transfer to the JUA would benefit current JUA policyholders that are subject to an assessment. It is anticipated that this transfer, coupled with the tax and assessment exemptions provided to the JUA under this bill will cover the estimated deficit in subplan D. However, if the premiums remain capped at their current levels, workers' compensation policyholders in the voluntary market would continue to be subject to future assessments to cover any deficit as the subplan will not be actuarially sound. Such assessments on policyholders would be limited to one percent per year of total workers' compensation premiums written.

As of February 29, 2004, 32 percent of the policies that have been bound in subplan D are minimum premium policies (811 of 2,534 policies). Further, a preliminary review of the current subplan D rates, minimum premiums and surcharges suggests that an imputed wage of $10,712 in the governing classification, as provided in the bill, would eliminate all minimum premium policies from subplan D. It should be noted, however, that while the subplan D premium associated with the imputed wage for some employers will be greater than the subplan D minimum premium for the governing classification, these premiums will still be less than the minimum premiums in subplans A, B and C.

Workers' Compensation Policyholders in the Voluntary Market
The bill authorizes an assessment on workers' compensation policyholders in the voluntary market to fund deficits that might occur in subplan D. Workers' compensation policyholders in the voluntary market would be subject to an assessment that could not exceed 1 percent of premium on workers' compensation policies written in Florida for a period of 1 year following the effective date of the assessment. In 2002, approximately $3 billion in workers' compensation premium was written in Florida. Such an assessment would be limited to approximately $30 million (1 percent of $3 billion) and would be collected by insurers on new and renewal policies for the 1 year period.

Insurers and Self-Insured Employers
The $35 million appropriated from the Worker's Compensation Administration Trust Fund in the Department of Financial Services for transfer to the JUA is not expected to result in an increase in the current assessment rate of 1.50 percent for self-insured employers and insurers for Fiscal Year 2004-2005. (See also Government Sector, below)

C. Government Sector Impact:

$35 million Appropriation
The bill provides a one-time appropriation of $35 million from the Workers' Compensation Administration Trust Fund in the Department of Financial Services for transfer to the Florida Worker's Compensation Joint Underwriting Association. The estimated June 30, 2004 unreserved fund balance is $61.4 million before to the transfer of this appropriation.

Additionally, this fund holds $152 million in reserve for the contingent liability associated with litigation regarding the calculation of assessments for this trust fund and the Special Disability Trust Fund prior to July 1, 2001. The availability of these reserved funds is contingent upon the outcome of any appeal of the 1st District Court of Appeal opinion issued on March 16, 2004. Generally, both parties have 15 days to file motions for rehearing. However, both parties in the litigation agreed to allow an extension of 20 days to file any motions for rehearing.

JUA Application Fees for Subplan D
The bill provides a $475 administrative fee estimated to generate $2,121,350 in revenue for the period July 1, 2004 through December 1, 2004. This revenue is based on 4,466 subplan D policies being written during this period of time.

Impact of Exempting the JUA from the Premium Tax and Chapter 440 Assessments
It is currently estimated that the JUA will pay only the premium tax filing fee of $1,000 for 2004. Contingent upon the effective date of the bill, approximately $2.5 million in assessments would be exempted through December 31, 2004.[11]

The JUA provided the following fiscal information regarding the exemption of the JUA from assessments on a calendar year basis:

2004	All Subplans	Subplan D Only
1st Quarter	$ 1,032,993	$ 472,136
2nd Quarter	1,173,967	536,861
3rd Quarter	1,328,988	608,956
4th Quarter	1,491,076	683,962
2004 Totals	$ 5,027,024	$2,301,915

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

[11] Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund assessments, ss. 440.51 and 440.49, F.S., respectively.

Bill No. CS for SB 2270

Amendment No. 1 235070

04 APR 12 AM 9:00

CHAMBER ACTION

Senate | House

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (5) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.--

(5)(a) The office shall, after consultation with insurers, approve a joint underwriting plan of insurers which shall operate as a nonprofit entity. For the purposes of this subsection, the term "insurer" includes group self-insurance funds authorized by s. 624.4621, commercial self-insurance funds authorized by s. 624.462, assessable mutual insurers authorized under s. 628.6011, and insurers licensed to write workers' compensation and employer's liability insurance in this state. The purpose of the plan is to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and

employer's liability insurance and who are in good faith entitled to but who are unable to procure ~~purchase~~ such insurance through the voluntary market. The plan must have actuarially sound rates that are not competitive with approved voluntary market rates so that the plan functions as a residual market mechanism ~~assure that the plan is self-supporting~~.

(b) The operation of the plan is subject to the supervision of a 9-member board of governors. The board of governors shall be comprised of:

1. Three members appointed by the Financial Services Commission. Each member appointed by the commission shall serve at the pleasure of the commission;

2. Two of the 20 domestic insurers, as defined in s. 624.06(1), having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 domestic insurers;

3. Two of the 20 foreign insurers as defined in s. 624.06(2) having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 foreign insurers;

4. One person appointed by the largest property and casualty insurance agents' association in this state; and

5. The consumer advocate appointed under s. 627.0613 or the consumer advocate's designee.

Each board member shall serve a 4-year term and may serve consecutive terms. A vacancy on the board shall be filled in the same manner as the original appointment for the unexpired

portion of the term. The Financial Services Commission shall designate a member of the board to serve as chair. No board member shall be an insurer which provides services to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which provides services to the plan. The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(c) The operation of the plan shall be governed by a plan of operation that is prepared at the direction of the board of governors. The plan of operation may be changed at any time by the board of governors or upon request of the office. The plan of operation and all changes thereto are subject to the approval of the office. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement this subsection, including, but not limited to, borrowing money.

2. Develop criteria for eligibility for coverage by the plan, including, but not limited to, documented rejection by at least two insurers which reasonably assures that insureds covered under the plan are unable to acquire coverage in the voluntary market. ~~Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the plan premium if the insurer writing the coverage adheres to the provisions of s. 627.171.~~

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the plan and that coverage may be available through an insurer, group self-insurers' fund, commercial

self-insurance fund, or assessable mutual insurer through another agent at a lower cost.

4. Establish programs to encourage insurers to provide coverage to applicants of the plan in the voluntary market and to insureds of the plan, including, but not limited to:

a. Establishing procedures for an insurer to use in notifying the plan of the insurer's desire to provide coverage to applicants to the plan or existing insureds of the plan and in describing the types of risks in which the insurer is interested. The description of the desired risks must be on a form developed by the plan.

b. Developing forms and procedures that provide an insurer with the information necessary to determine whether the insurer wants to write particular applicants to the plan or insureds of the plan.

c. Developing procedures for notice to the plan and the applicant to the plan or insured of the plan that an insurer will insure the applicant or the insured of the plan, and notice of the cost of the coverage offered; and developing procedures for the selection of an insuring entity by the applicant or insured of the plan.

d. Provide for a market-assistance plan to assist in the placement of employers. All applications for coverage in the plan received 45 days before the effective date for coverage shall be processed through the market-assistance plan. A market-assistance plan specifically designed to serve the needs of small, good policyholders as defined by the board must be finalized by January 1, 1994.

5. Provide for policy and claims services to the insureds of the plan of the nature and quality provided for insureds in the voluntary market.

6. Provide for the review of applications for coverage with the plan for reasonableness and accuracy, using any available historic information regarding the insured.

7. Provide for procedures for auditing insureds of the plan which are based on reasonable business judgment and are designed to maximize the likelihood that the plan will collect the appropriate premiums.

8. Authorize the plan to terminate the coverage of and refuse future coverage for any insured that submits a fraudulent application to the plan or provides fraudulent or grossly erroneous records to the plan or to any service provider of the plan in conjunction with the activities of the plan.

9. Establish service standards for agents who submit business to the plan.

10. Establish criteria and procedures to prohibit any agent who does not adhere to the established service standards from placing business with the plan or receiving, directly or indirectly, any commissions for business placed with the plan.

11. Provide for the establishment of reasonable safety programs for all insureds in the plan. All insureds of the plan must participate in the safety program.

12. Authorize the plan to terminate the coverage of and refuse future coverage to any insured who fails to pay premiums or surcharges when due; who, at the time of application, is delinquent in payments of workers' compensation or employer's liability insurance premiums or surcharges owed to an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer licensed to write such coverage in this state; or who refuses to substantially comply with any safety programs recommended

by the plan.

13. Authorize the board of governors to provide the services required by the plan through staff employed by the plan, through reasonably compensated service providers who contract with the plan to provide services as specified by the board of governors, or through a combination of employees and service providers.

14. Provide for service standards for service providers, methods of determining adherence to those service standards, incentives and disincentives for service, and procedures for terminating contracts for service providers that fail to adhere to service standards.

15. Provide procedures for selecting service providers and standards for qualification as a service provider that reasonably assure that any service provider selected will continue to operate as an ongoing concern and is capable of providing the specified services in the manner required.

16. Provide for reasonable accounting and data-reporting practices.

17. Provide for annual review of costs associated with the administration and servicing of the policies issued by the plan to determine alternatives by which costs can be reduced.

18. Authorize the acquisition of such excess insurance or reinsurance as is consistent with the purposes of the plan.

19. Provide for an annual report to the office on a date specified by the office and containing such information as the office reasonably requires.

20. Establish multiple rating plans for various classifications of risk which reflect risk of loss, hazard grade, actual losses, size of premium, and compliance with loss control. At least one of such plans must be a

preferred-rating plan to accommodate small-premium policyholders with good experience as defined in sub-subparagraph 22.a.

21. Establish agent commission schedules.

22. For employers otherwise eligible for coverage under the plan, establish three tiers of employers meeting the criteria and subject to the rate limitations specified in this subparagraph.

a. Tier One.--

(I) Criteria, rated employers.--An employer that has an experience modification rating shall be included in Tier One if it meets all of the following:

(A) The experience modification is below 1.00;

(B) The employer had no lost-time claims subsequent to the applicable experience modification rating period; and

(C) The total of the employer's medical-only claims subsequent to the applicable experience modification rating period did not exceed 20 percent of premium.

(II) Criteria, nonrated employers.--An employer that does not have an experience modification rating shall be included in Tier One if it meets all of the following:

(A) The employer had no lost-time claims for the 3-year period immediately preceding the inception date or renewal date of its coverage under the plan;

(B) The total of the employer's medical-only claims for the 3-year period immediately preceding the inception date or renewal date of its coverage under the plan did not exceed 20 percent of premium;

(C) It has secured workers' compensation coverage for the entire three-year period immediately preceding the inception date or renewal date of its coverage under the plan;

(D) It is able to provide the plan with a loss history generated by its prior workers' compensation insurer, except that if the employer is not able to produce a loss history due to the insolvency of an insurer, the employer may, in lieu of the loss history, submit an affidavit from the employer and the employer's insurance agent setting forth the loss history; and

(E) It is not a new business.

(III) Premiums.--The premiums for Tier One insureds shall be set at a premium level 25 percent above the comparable voluntary market premiums until the plan has sufficient, credible experience as determined by the board to establish an actuarially sound rate for Tier One, at which point the board shall, subject to paragraph (e), adjust the rate, if necessary, to produce actuarially sound rates; provided the rate adjustment does not take effect until January 1, 2007.

b. Tier Two.--

(I) Criteria, rated employers.--An employer that has an experience modification rating shall be included in Tier Two if it meets all of the following:

(A) The experience modification is equal to or greater than 1.00 but not greater than 1.10;

(B) The employer had no lost-time claims subsequent to the applicable experience modification rating period; and

(C) The total of the employer's medical-only claims subsequent to the applicable experience modification rating period did not exceed 20 percent of premium.

(II) Criteria, non-rated employers.--An employer that does not have any experience modification rating shall be included in Tier Two if it is a new business. An employer

shall be included in Tier Two if it has less than 3 years of loss experience in the 3-year period immediately preceding the inception date or renewal date of its coverage under the plan and it meets all of the following:

(A) The employer had no lost-time claims for the 3-year period immediately preceding the inception date or renewal date of its coverage under the plan;

(B) The total of the employer's medical-only claims for the 3-year period immediately preceding the inception date or renewal date of its coverage under the plan did not exceed 20 percent of premium; and

(C) It is able to provide the plan with a loss history generated by the workers' compensation insurer that provided coverage for the portion or portions of such period during which the employer had secured workers' compensation coverage. If the employer is not able to produce a loss history due to the insolvency of an insurer, the employer may, in lieu of the loss history, submit an affidavit from the employer and the employer's insurance agent setting forth the loss history.

(IV) Premiums.--The premiums for Tier Two insureds shall be set at a premium level 50 percent above the comparable voluntary market premiums until the plan has sufficient, credible experience as determined by the board to establish an actuarially sound rate for Tier Two, at which point the board shall, subject to paragraph (e), adjust the rate, if necessary, to produce actuarially sound rates; provided the rate adjustment does not take effect until January 1, 2007.

c. Tier Three.--

(I) Eligibility.--An employer shall be included in Tier Three if it does not meet the criteria for Tier One or

Tier Two.

(II) Rates.--The board shall establish, subject to paragraph (e), and the plan shall charge actuarially sound rates for the Tier Three insureds. ~~Establish four subplans as follows:~~

~~a.--Subplan "A" must include those insureds whose annual premium does not exceed $2,500 and who have neither incurred any lost time claims nor incurred medical only claims exceeding 50 percent of their premium for the immediate 2 years.~~

~~b.--Subplan "B" must include insureds that are employers identified by the board of governors as high risk employers due solely to the nature of the operations being performed by those insureds and for whom no market exists in the voluntary market, and whose experience modifications are less than 1.00.~~

~~c.--Subplan "C" must include all insureds within the plan that are not eligible for subplan "A," subplan "B," or subplan "D."~~

~~d.--Subplan "D" must include any employer, regardless of the length of time for which it has conducted business operations, which has an experience modification factor of 1.10 or less and either employs 15 or fewer employees or is an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code and receives more than 50 percent of its funding from gifts, grants, endowments, or federal or state contracts. The rate plan for subplan "D" shall be the same rate plan as the plan approved under ss. 627.091-627.151, and each participant in subplan "D" shall pay the premium determined under such rate plan, plus a surcharge determined by the board to be sufficient to ensure that the~~

~~plan does not compete with the voluntary market rate for any participant, but not to exceed 25 percent. However, the surcharge shall not exceed 10 percent for an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.~~

23. For Tier One or Tier Two employers which employ no nonexempt employees or which report payroll which is less than the minimum wage hourly rate for one full-time employee for one year at 40 hours per week, the plan shall establish actuarially sound premiums, provided, however, that the premiums may not exceed $2,500. These premiums shall be in addition to the fee specified in subparagraph 26. When the plan establishes actuarially sound rates for all employers in Tier One and Tier Two, the premiums for employers referred to in this paragraph are no longer subject to the $2,500 cap.

24.~~23.~~ Provide for a depopulation program to reduce the number of insureds in the plan. ~~subplan "D."~~ If an employer insured through the plan ~~subplan "D"~~ is offered coverage from a voluntary market carrier:

a. During the first 30 days of coverage under the plan ~~subplan~~;

b. Before a policy is issued under the plan ~~subplan~~;

c. By issuance of a policy upon expiration or cancellation of the policy under the plan ~~subplan~~; or

d. By assumption of the plan's ~~subplan's~~ obligation with respect to an in-force policy,

that employer is no longer eligible for coverage through the plan. The premium for risks assumed by the voluntary market carrier must be no greater than the ~~same~~ premium the insured would have paid under the plan, and shall be adjusted upon

renewal to reflect changes in the plan rates and the tier for which the insured would qualify as of the time of renewal. The insured may be charged premiums only for the first 2 years of coverage in the voluntary market ~~plus, for the first 2 years, the surcharge as determined in sub-subparagraph 22.d~~. A premium under this subparagraph, ~~including surcharge,~~ is deemed approved and is not an excess premium for purposes of s. 627.171.

25.~~24.~~ Require that policies issued ~~under subplan "D"~~ and applications ~~for such policies~~ must include a notice that the policy ~~issued under subplan "D"~~ could be replaced by a policy issued from a voluntary market carrier and that, if an offer of coverage is obtained from a voluntary market carrier, the policyholder is no longer eligible for coverage through the plan. ~~subplan "D."~~ The notice must also specify that acceptance of coverage under the plan ~~subplan "D"~~ creates a conclusive presumption that the applicant or policyholder is aware of this potential.

26. Require that each application for coverage and each renewal premium be accompanied by a nonrefundable fee of $475 to cover costs of administration and fraud prevention. The board may, with the approval of the office, increase the amount of the fee pursuant to a rate filing to reflect increased costs of administration and fraud prevention. The fee is not subject to commission and is fully earned upon commencement of coverage.

(d)1. The funding of the plan shall include premiums as provided in subparagraph (c)22. and assessments as provided in this paragraph.

2.a. If the board determines that a deficit exists in Tier One or Tier Two or that there is any deficit remaining

attributable to the former subplan "D" and that the deficit cannot reasonably be funded without the use of deficit assessments, the board shall request the Office of Insurance Regulation to levy, by order, a deficit assessment against premiums charged to insureds for workers' compensation insurance by insurers as defined in s. 631.904(5). The office shall issue the order after verifying the amount of the deficit. The assessment shall be specified as a percentage of future premium collections, as recommended by the board and approved by the office. The same percentage shall apply to premiums on all workers' compensation policies issued or renewed during the 12-month period beginning on the effective date of the assessment, as specified in the order.

b. With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessments collected to the plan as provided in the order issued by the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of deficit assessments and shall report the information to the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and audit compliance with this paragraph.

c. Deficit assessments are not considered a part of an insurer's rate, are not premium and are not subject to the premium tax, to the assessments under ss. 440.49 and 440.51, to the surplus lines tax, to any fees, or to any commissions. The deficit assessment imposed becomes plan funds at the moment of collection and does not constitute income for any

purpose, including financial reporting on the insurer's income statement. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay premium. An insurer is not liable for uncollectible assessments.

d. When an insurer is required to return unearned premium, it shall also return any collected assessments attributable to the unearned premium.

3.a. All policies issued to Tier Three insureds shall be assessable. All Tier Three assessable policies must be clearly identified as assessable by containing, in contrasting color and in not less than 10-point type, the following statements: "This is an assessable policy. If the plan is unable to pay its obligations, policyholders will be required to contribute on a pro rata earned premium basis the money necessary to meet any assessment levied."

b. The board may from time to time assess Tier Three insureds to whom the plan has issued assessable policies for the purpose of funding plan deficits. Any assessment shall be based upon a reasonable actuarial estimate of the amount of the deficit, taking into account the amount needed to fund medical and indemnity reserves and reserves for incurred but not reported claims, and allowing for general administrative expenses, the cost of levying and collecting the assessment, a reasonable allowance for estimated uncollectible assessments, and both allocated and unallocated loss adjustment expenses.

c. Each Tier Three insured's share of a deficit shall be computed by applying to the premium earned on the insured's policy or policies during the period to be covered by the assessment the ratio of the total deficit to the total premiums earned during the period upon all policies subject to

the assessment. In the event one or more Tier Three insureds fail to pay an assessment, the other Tier Three insureds shall be liable on a proportionate basis for additional assessments to fund the deficit. The plan may compromise and settle individual assessment claims without affecting the validity of or amounts due on assessments levied against other insureds. The plan may offer and accept discounted payments for assessments which are promptly paid. The plan may offset the amount of any unpaid assessment against unearned premiums which may otherwise be due to an insured. The plan shall institute legal action when necessary and appropriate to collect the assessment from any insured who fails to pay an assessment when due.

d. The venue of a proceeding to enforce or collect an assessment or to contest the validity or amount of an assessment shall be in the Circuit Court of Leon County.

e. If the board finds that a deficit in Tier Three exists for any period and that an assessment is necessary, it shall certify to the office the need for an assessment. No sooner than 30 days after the date of the certification, the board shall notify in writing each insured who is to be assessed that an assessment is being levied against the insured, and informing the insured of the amount of the assessment, the period for which the assessment is being levied, and the date by which payment of the assessment is due. The board shall establish a date by which payment of the assessment is due, which may not be sooner than 30 days or later than 120 days after the date on which notice of the assessment is mailed to the insured. ~~The plan must be funded through actuarially sound premiums charged to insureds of the plan.~~

~~2.--The plan may issue assessable policies only to those insureds in subplans "C" and "D." Subject to verification by the department, the board may levy assessments against insureds in subplan "C" or subplan "D," on a pro rata earned premium basis, to fund any deficits that exist in those subplans. Assessments levied against subplan "C" participants shall cover only the deficits attributable to subplan "C," and assessments levied against subplan "D" participants shall cover only the deficits attributable to subplan "D." In no event may the plan levy assessments against any person or entity, except as authorized by this paragraph. Those assessable policies must be clearly identified as assessable by containing, in contrasting color and in not less than 10-point type, the following statements: "This is an assessable policy. If the plan is unable to pay its obligations, policyholders will be required to contribute on a pro rata earned premium basis the money necessary to meet any assessment levied."~~

~~3.--The plan may issue assessable policies with differing terms and conditions to different groups within subplans "C" and "D" when a reasonable basis exists for the differentiation.~~

4. The plan may offer rating, dividend plans, and other plans to encourage loss prevention programs.

(e) The plan shall establish and use its rates and rating plans, and the plan may establish and use changes in rating plans at any time, but no more frequently than two times per any rating class for any calendar year. By December 1, 1993, and December 1 of each year thereafter, the board shall, except as provided in subparagraph (c)22., establish and use actuarially sound rates for use by the plan to assure

that the plan is self-funding while those rates are in effect. Such rates and rating plans must be filed with the office within 30 calendar days after their effective dates, and shall be considered a "use and file" filing. Any disapproval by the office must have an effective date that is at least 60 days from the date of disapproval of the rates and rating plan and must have prospective effect only. The plan may not be subject to any order by the office to return to policyholders any portion of the rates disapproved by the office. The office may not disapprove any rates or rating plans unless it demonstrates that such rates and rating plans are excessive, inadequate, or unfairly discriminatory.

(f) No later than June 1 of each year, the plan shall obtain an independent actuarial certification of the results of the operations of the plan for prior years, and shall furnish a copy of the certification to the office. If, after the effective date of the plan, the projected ultimate incurred losses and expenses and dividends for prior years exceed collected premiums, accrued net investment income, and prior assessments for prior years, the certification is subject to review and approval by the office before it becomes final.

(g) Whenever a deficit exists, the plan shall, within 90 days, provide the office with a program to eliminate the deficit within a reasonable time. The deficit may be funded through increased premiums charged to insureds of the plan for subsequent years, through the use of policyholder surplus attributable to any year, <u>through the use of assessments as provided in subparagraph (d)2.,</u> and through assessments on ~~insureds-in-the-plan-if-the-plan-uses~~ assessable policies <u>as provided in subparagraph (d)3</u>.

(h) Any premium or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds of the plan in conjunction with loss prevention or dividend programs shall be retained by the plan for future use.

(i) The decisions of the board of governors do not constitute final agency action and are not subject to chapter 120.

(j) Policies for insureds shall be issued by the plan.

(k) The plan created under this subsection is liable only for payment for losses arising under policies issued by the plan with dates of accidents occurring on or after January 1, 1994.

(l) Plan losses are the sole and exclusive responsibility of the plan, and payment for such losses must be funded in accordance with this subsection and must not come, directly or indirectly, from insurers or any guaranty association for such insurers.

(m) Each joint underwriting plan or association created under this section is not a state agency, board, or commission. However, for the purposes of s. 199.183(1) only, the joint underwriting plan is a political subdivision of the state and is exempt from the corporate income tax.

(n) Each joint underwriting plan or association may elect to pay premium taxes on the premiums received on its behalf or may elect to have the member insurers to whom the premiums are allocated pay the premium taxes if the member insurer had written the policy. The joint underwriting plan or association shall notify the member insurers and the Department of Revenue by January 15 of each year of its

election for the same year. As used in this paragraph, the term "premiums received" means the consideration for insurance, by whatever name called, but does not include any policy assessment or surcharge received by the joint underwriting association as a result of apportioning losses or deficits of the association pursuant to this section.

(o) Neither the plan nor any member of the board of governors is liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policies of the plan, unless:

1. The member breached or failed to perform her or his duties as a member; and

2. The member's breach of, or failure to perform, duties constitutes:

a. A violation of the criminal law, unless the member had reasonable cause to believe her or his conduct was not unlawful. A judgment or other final adjudication against a member in any criminal proceeding for violation of the criminal law estops that member from contesting the fact that her or his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the member from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

b. A transaction from which the member derived an improper personal benefit, either directly or indirectly; or

c. Recklessness or any act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. For purposes of this

sub-subparagraph, the term "recklessness" means the acting, or omission to act, in conscious disregard of a risk:

(I) Known, or so obvious that it should have been known, to the member; and

(II) Known to the member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such act or omission.

(p) No insurer shall provide workers' compensation and employer's liability insurance to any person who is delinquent in the payment of premiums, assessments, penalties, or surcharges owed to the plan or to any person who is an affiliated person of a person who is delinquent in the payment of premiums, assessments, penalties, or surcharges owed to the plan. For the purposes of this paragraph, the term "affiliated person" of another person means:

1. The spouse of such other natural person;

2. Any person who directly or indirectly owns or controls, or holds with the power to vote, 5 percent or more of the outstanding voting securities of such other person;

3. Any person who directly or indirectly owns 5 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by such other person;

4. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;

5. Any officer, director, trustee, partner, owner, manager, joint venturer, or employee, or other person performing duties similar to persons in those positions, of such other person; or

6. Any person who has an officer, director, trustee,

partner, or joint venturer in common with such other person.

(q) Effective July 1, 2004, the plan is exempt from the premium tax under s. 624.509 and any assessments under ss. 440.49 and 440.51.

Section 2. Notwithstanding the provisions of sections 440.50 and 440.51, Florida Statutes, for the 2004-2005 fiscal year:

(1) The sum of $25 million is appropriated from the Workers' Compensation Administration Trust Fund in the Department of Financial Services for transfer to the workers' compensation joint underwriting plan provided in section 627.311(5), Florida Statutes, as a capital contribution to fund any deficit in the plan. The Chief Financial Officer shall transfer the funds to the plan no later than July 31, 2004.

(2) The workers' compensation joint underwriting plan set forth in section 627.311(5), Florida Statutes, may request the Department of Financial Services to transfer an amount not to exceed $10 million from the Workers' Compensation Administration Trust Fund to the plan subject to the approval of the Legislative Budget Commission under sections 216.181 and 216.292, Florida Statutes. The workers' compensation joint underwriting plan board of governors and the Office of Insurance Regulation must first certify to the Department of Financial Services that a deficit exists in the workers' compensation joint underwriting plan. The amount requested for transfer to the plan may not exceed the deficit amount jointly certified by the board of governors and the Office of Insurance Regulation to exist in Tier One or Tier Two or for any deficit remaining attributable to the former subplan "D" which cannot be funded without the use of deficit assessments

as authorized by section 627.351(5)(d), Florida Statutes.

Section 3. Transitional provisions.--Effective upon this act becoming a law:

(1) Notwithstanding section 627.311(5), Florida Statutes, to the contrary, no policy in subplan "D" of the Florida Workers' Compensation Joint Underwriting Association is subject to an assessment for the purpose of funding a deficit.

(2) Any policy issued by the Florida Workers' Compensation Joint Underwriting Association with an effective date between the date on which this act becomes a law and June 30, 2004, shall be rerated and placed in the appropriate tier provided in section 627.311(5), Florida Statues, as amended effective July 1, 2004, and shall be subject to the premiums and charges provided for in that section as amended.

Section 4. Effective upon this act becoming a law:

(1) The Legislature intends to create a state workers' compensation mutual fund if workers' compensation coverage is not generally available and affordable to small employers in Florida by October 1, 2005. In order to make this determination, there is established the Workers' Compensation Insurance Market Evaluation Committee which shall consist of one member appointed by the Governor, who shall serve as chair; two members appointed by the President of the Senate; and two members appointed by the Speaker of the House of Representatives. The committee shall monitor and report on the number of insurers actively writing workers' compensation insurance in this state for small employers, the number of policies issued, premium volume written, types of underwriting restrictions utilized, and the extent to which actual premiums charged vary from standard rates, such as the use of excess

rates pursuant to section 627.171, Florida Statutes, and rate deviations pursuant to section 627.211, Florida Statutes. The Office of Insurance Regulation shall provide such related information to the committee as is requested, and workers' compensation insurers shall report such information to the office in the manner and format specified by the office.

(2) The committee shall meet once each month, beginning in August 2004, and shall provide interim reports to the appointing officers on October 1, 2004, December 1, 2004, and March 1, 2005, and at such additional times as the President of the Senate and the Speaker of the House of Representatives jointly require. Members of the committee shall be entitled to reimbursement for travel and per diem pursuant to section 112.061, Florida Statutes.

(3) If the Legislature determines that workers' compensation coverage is not generally available and affordable to small employers in Florida, the Legislature intends to create a state mutual fund as a nonprofit entity for the benefit of its small employer policyholders. The state mutual fund would compete with private carriers and would be charged with the public mission of customer service, quality loss prevention, timely claims management, active fighting of fraud, and compassionate care for injured workers, at the lowest cost consistent with actuarial sound rates. The fund should primarily rely on an in-house staff of professional employees, rather than contracting with servicing carriers. It is further intended that the state appropriate adequate initial capitalization for the fund and that the fund be subject to the same financial and other requirements as apply to an authorized insurer.

Section 5. Except as otherwise expressly provided in

this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2004.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to workers' compensation; amending s. 627.311, F.S.; establishing three tiers of employers eligible for coverage under the plan; providing for criteria and rates for each tier; deleting references to subplans; providing for assessments to cover deficits in tiers one and two; providing procedures to collect the assessment; exempting the plan from specified premium tax and assessments; appropriating moneys from the Workers' Compensation Administration Trust Fund to fund plan deficits; providing transitional provisions to subplan "D" policies; providing legislative intent to create a state workers' compensation mutual fund under certain conditions; establishing the Workers' Compensation Insurance Market Evaluation Committee; providing for appointment of members; requiring the committee to monitor and report; requiring the Office of Insurance Regulation and workers' compensation insurers

to report certain information; specifying meeting dates and interim reports for the committee; providing for reimbursement for travel and per diem; providing legislative intent as to the type of mutual fund it intends to create; prohibiting insurers from providing coverage to any person who is an affiliated person of a person who is delinquent in the payment of premiums, assessments, penalties, or surcharges owed to the plan; providing effective dates.

3

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2954

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Agriculture Committee, and Senators Alexander, Bullard, and Dockery

SUBJECT: Migrant Labor

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable/CS
2.	Kruse	Maclure	CM	Favorable/CS
3.	DeLoach	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 2954 revises the framework for the regulation of farm labor contractors. The committee substitute also revises the employer-employee relationship between farm labor contractors and migrant farmworkers, by, among other things, providing a migrant farmworker with certain protections from retaliation by a farm labor contractor. The committee substitute also provides a mechanism for an agricultural worker to receive pertinent information regarding pesticides that the worker may have to use or be exposed to in the course of the worker's employment.

The committee substitute renames and reactivates the Legislative Commission on Migrant and Seasonal Labor, which has not been active for several years. It delineates the commission's responsibilities and revises the membership of the commission. The committee substitute strengthens the Department of Business and Professional Regulation's enforcement powers and provides additional protections for farmworkers. It renames part III of ch. 450, F.S., currently cited as the "Farm Labor Registration Law," to the "Farm Labor Contractor Registration Law." The committee substitute provides that an applicant for renewal of a certificate of registration as a farm labor contractor is required to retake the competency examination when that person has been convicted of or penalized for committing a major violation within a specified time. The application fee for a certificate of registration is increased from $75 to $125.

The committee substitute creates a best practices incentive program for farm labor contractors to promote compliance and to help the public identify farm labor contractors who have demonstrated a firm commitment to responsible and safe labor practices. Farm labor contractors are required to maintain accurate daily field records for each employee actually paid by the farm labor contractor reflecting the hours worked, and are prohibited from taking retaliatory action

against any person that has filed a complaint or aided in an investigation. Also a farm labor contractor may not require that a farmworker purchase goods or services solely from that farm labor contractor or from a person acting as his or her agent.

The committee substitute revises the penalties imposed for violations of part III of ch. 450, F.S. It increases the maximum civil penalty from $1,000 to $2,500 for each violation and authorizes civil penalties or the revocation of registration if a farm labor contractor commits one or more minor violations.

This committee substitute also creates the "Florida Agricultural Worker Safety Act" to be administered by the Department of Agriculture and Consumer Services (DACS). The intent of the act is to ensure that agricultural workers are protected from and receive information about agricultural pesticides. It specifies that DACS shall continue to operate under the regulations established by the United States Environmental Protection Agency Labeling Requirement for Pesticides and Devices and the Worker Protection Standards, which DACS adopted by rule during the 1995-1996 fiscal year.

The committee substitute requires an agricultural employer to provide agricultural workers and others with specific written information concerning agricultural pesticides within two working days after being requested. It is unlawful for the employer to fail to provide the required pesticide information or to take any retaliatory action against any agricultural worker. DACS is required to monitor all complaints of retaliation and to report its findings to the Legislature on or before October 1, 2008.

The committee substitute amends the following sections of the Florida Statutes: 381.008, 381.0086, 381.0087, 403.088, 450.191, 450.201, 450.211, 450.231, 450.27, 450.271, 450.28, 450.30, 450.31, 450.33, 450.34, 450.35, 450.37, 450.38, 487.011, 487.012, 487.021, 487.025, 487.031, 487.041, 487.0435, 487.045, 487.046, 487.047, 487.049, 487.051, 487.0615, 487.071, 487.081, 487.091, 487.101, 487.111, 487.13, 487.156, 487.159, 487.161, 487.163, 487.171, 487.175, 482.242, 500.03, and 570.44. The committee substitute also creates sections 450.321, 450.39, and part II of chapter 487, consisting of sections 487.2011, 487.2021, 487.2031, 487.2041, 487.2051, 487.2061, and 487.2071, Florida Statutes.

II. Present Situation:

Migrant Labor

A "migrant farmworker" is defined in s. 381.008, F.S., as a person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months.

There are between 200,000 and 300,000 migrant farmworkers who harvest crops in Florida. The majority of farmworkers are young (under 44), male, and Latino. Most are recent immigrants and many may be undocumented. Many migrant farmworkers also have very little formal education and have limited literacy and communication skills in English.

Farm Labor Contractors

A farm labor contractor, as defined in s. 450.28(1)(a), F.S., is a person who, for a fee, provides farm worker laborers, who may work directly under his or her control or under the control of a third person. Chapter 450, F.S., regulates activities concerning Minority Labor Groups. One of its requirements, in s. 450.30(1), F.S., is that farm labor contractors obtain a certificate of registration from the Department of Business and Professional Regulation upon completion of a program of education and examination. The chapter imposes duties on farm labor contractors and prohibits them from engaging in misrepresentations in their application for registration and in information about the terms of employment.[1] Violators can be charged with a misdemeanor of the second degree and may be subject to a civil penalty of up to $1,000 and an injunction.

The Department of Professional Regulation reports that there are 3,600 farm labor contractors registered pursuant to this law. Florida is home to more farm labor contractors than any state in the nation, and also leads the nation in the number of farm labor contractors and assistants currently losing licenses to work because of labor violations.

Agricultural Worker Safety

Federal Laws Related to the Use of Pesticides and Farm Workers
In August 1992, the federal Environmental Protection Agency (EPA) adopted the Worker Protection Standard for Agricultural Pesticides (WPS). The purpose of the standard is to reduce the risks of illness or injury resulting from workers and handlers occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests, and also from accidental exposure of workers and other persons to pesticides. The standard also requires workplace practices designed to reduce or eliminate exposures to pesticides and to exposure-related emergencies.

The federal WPS requires employers to adhere to strict regulations designed to ensure the safety of agricultural workers. The standards require employers to:

- provide written or oral information to agricultural workers stating the type of pesticides used on the crops being harvested;
- provide personal protective equipment designed to protect the body from contact with pesticides to each farm worker;
- restrict reentry of the workers into fields after pesticides have been sprayed and advise each worker about the spraying; and
- provide facilities for a farm worker near to the work area so the farm worker may wash his or her hands to clean them of pesticide residue and for emergency rinsing of the eyes and mouth.

The WPS also prohibits employers from exposing farm workers to pesticides through direct spraying or drift-away pesticide spray from airplanes or tractors.

[1] Section 450.31(2)(b) &(c), F.S.

The EPA's Office of Pesticide Programs was established to protect the public health and the environment from the risks posed by pesticides, to promote safer means of pest control, and to ensure that pesticides are fairly and efficiently regulated. The EPA's Office of Enforcement and Compliance Assurance is responsible for ensuring compliance with federal environmental statutes through regional offices across the country.

The federal Occupational Health and Safety Act of 1970 requires that farm workers who work on farms with 11 or more workers must have access to basic field sanitation facilities.

Florida Laws Related to the Use of Pesticides and Farm Workers

The Florida Pesticide Law is governed under ch. 487, F.S. The Department of Agriculture and Consumer Services (DACS) is the primary agency for administering state pesticide laws and regulations. Chapter 487, F.S., regulates the distribution, sale, and use of pesticides [except as provided in ch. 388, F.S., (mosquito control), and ch. 482, F.S., (pest control)] and was created to protect people and the environment from the adverse effects of pesticides. Under s. 487.021(49), F.S., pesticide means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant."

DACS, under s. 487.0435, F.S., may license and certify applicants to work with restricted-use pesticides. DACS may issue certified applicator licenses for public applicators, private applicators, and commercial applicators. Under s. 487.044(2), F.S., in order for a person to be a licensed certified pesticides applicator, that person must demonstrate competence by way of a written or oral examination that demonstrates adequate knowledge concerning the proper use and application of restricted-use pesticides. The applicant for a certified applicator's license must demonstrate minimum competence as to:

- the proper use of pesticide application equipment;
- the environmental hazards that may be involved in applying restricted-use pesticides;
- calculating the concentration of restricted-use pesticides to be used in particular circumstances;
- identifying common pests to be controlled and the damage caused by such pests;
- using of protective clothing and respiratory equipment required during the handling and application of restricted-use pesticides;
- precautions to be followed in the disposal of containers, as well as cleaning and decontamination of the equipment used in the application of the pesticides;
- applicable state and federal pesticide laws, rules, and regulations; and
- general safety precautions.

DACS is authorized through s. 487.051(2), F.S., to adopt by rule the primary standards established by the U.S. Environmental Protection Agency with respect to pesticides. This section states that should any federal law preempt any provision in ch. 487, F.S., any provision that is not preempted is still applicable.

Section 487.0615, F.S., creates within DACS the Pesticide Review Council. Its purpose is to advise the Commissioner of Agriculture regarding the sale, use, and registration of pesticides and to advise government agencies with respect to activities related to their responsibilities regarding pesticides. The council is comprised of 11 scientific members from state agencies and state universities, and is empowered to do the following:

- Recommend appropriate scientific studies on any registered pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health.
- Recommend actions to be taken by DACS with respect to the sale or use of a pesticide which the council has reviewed.
- Provide advice or information to government agencies with respect to activities related to their responsibilities regarding pesticides.
- Review biological and alternative controls to replace or reduce the use of pesticides.
- Consider the development of appropriate advice or recommendations on a pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health.
- Assist DACS in the review of registered pesticides which are selected for special review based upon potential environmental or human health effects.

Section 487.1585, F.S., provides the duties of a pesticide licensee who supervises unlicensed pesticide applicators and field workers. A licensed pesticide applicator must provide adequate instruction and training on the safety procedures required for applying pesticides. Such training and instruction must include:

- safety procedures to be followed as specified on the label of the pesticide;
- safety clothing and equipment to be worn;
- common symptoms of pesticide poisoning;
- the dangers of eating, drinking, or smoking while handling pesticides; and
- where to obtain medical treatment if needed.

Prior Laws Regarding Agricultural Safety

1994 Florida Agricultural Worker Safety Act

In 1994, the Legislature created the Florida Agricultural Worker Safety Act [ch. 94-233, L.O.F., sections 27 and 28], which was later repealed in January 1998.

The act authorized the Department of Agriculture and Consumer Services (DACS) to adopt by rule the requirements of the federal Environmental Protection Agency's Labeling Requirement for Pesticides and Devices, and the Worker Protection Standards for Agricultural Pesticides. The act required agricultural employers to provide agricultural workers with specific written information concerning agricultural pesticides. The act provided penalties for agricultural employers who violated any provisions of the act. The act required DACS to monitor agricultural workers' complaints of retaliation from employers for raising issues related to the act or the federal Worker Protection Standard, and to submit a report to the Legislature on such complaints.

The act required DACS to produce a pesticide safety information sheet for agricultural workers. The act required employers to inform farm workers when pesticides were applied within the previous 30 days and provide detailed information on health and safety issues related to the pesticides. The act also allowed an agricultural worker to seek relief under Florida law if that worker had been retaliated against by an employer for raising issues related to the act.

The act was repealed January 1, 1998, in s. 28 of ch. 94-233, L.O.F.

Monitoring of Pesticides

In 1997, the Florida Department of Health began a five-year multi-state project under the National Institute for Occupational Safety and Health named the Sentinel Event Notification System for Occupational Risk Program or SENSOR. The purpose of the SENSOR project was to build and maintain an occupational illness and injury surveillance capacity with state health departments. Acute occupational pesticide-related illnesses and injuries were to be reported under the SENSOR project. Besides maintaining a record of the incidents of occupational pesticide-related cases, SENSOR also provided for in-depth investigations and preventive interventions aimed at particular industries. The surveillance for occupational pesticide-related illness and injury was designed to protect farm workers by determining the underlying causes for overexposure to pesticides in the workplace and to serve as an early warning system of any harmful effects not detected by the manufacturer testing of pesticides.

This pesticide exposure surveillance program was a collaborative effort between state agencies, county health units, the medical establishment, state universities, and farm owners and groups, and farm worker organizations and groups. Short-term goals of the project were to increase the reporting of occupational pesticide-related cases, describe the magnitude and trend of such cases, identify populations at risk, identify emerging pesticide problems, and increase the awareness among farm workers and the public of pesticide-related illnesses. Long-term goals of the project were to reduce exposure to pesticides and reduce the toxicity of pesticide exposure.

According to a 1999 report on the progress of the SENSOR project, the Department of Health reported that the number of cases of acute pesticide-related illnesses detected by the department rose from an average of about 4 cases per year to 171 cases in 1999.

III. Effect of Proposed Changes:

This committee substitute provides a number of changes to various laws governing, among other things, farm laborer contractors and migrant and seasonal farm workers.

Section 1. Amends s. 450.191, F.S., to authorize the Executive Office of the Governor to advise and consult with migrant and seasonal workers and their employers about ways to improve living and working conditions of migrant and seasonal workers. Changes the term "crew leader" to "farm labor contractor." Authorizes the Executive Office of the Governor to provide coordination for farm labor registration, cooperate with the Department of Business and Professional Regulation (DBPR) on enforcing labor laws, and cooperate with the Agency for Workforce Innovation in recruiting migrant laborers.

Section 2. Amends s. 450.201, F.S., to revise the Legislative Commission on Migrant Labor and rename it the Legislative Commission on Migrant and Seasonal Labor. The renamed commission must make its initial appointments no later than March 1, 2005, and hold its first meeting no later than July 1, 2005. The Legislative Commission on Migrant Labor, a permanent joint committee of the Legislature, was authorized in 1970 with a statutorily prescribed membership of three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House. The statutorily prescribed duties, that will now apply to the renamed commission, include:

- To maintain a continuing consultative examination and supervision of the migrant labor programs relating to living conditions; health, housing, and sanitation; labor laws; education; transportation safety; public assistance; and the coordination of federal, state, and local programs administered by agencies of the executive branch of Florida government;
- To cooperate with the executive branch of state government in developing improvements in existing programs in order to discover and establish better coordination of migrant labor programs;
- To cooperate with commissions, agencies, and committees of other states having similar responsibilities, including participation in the Interstate Compact on Migrant Labor hereinafter authorized; and
- In cooperation with commissions, agencies, and committees of other states having similar responsibilities, to develop and enter into agreements for the establishment of cooperative arrangements whereby migrant labor programs shall have a continuing administration, application, and effectiveness from state to state.[2]

Section 3. Amends s. 450.211, F.S., to revise the membership of the advisory committee to the Legislative Commission on Migrant and Seasonal Labor. The following agencies may appoint one nonvoting member each: Department of Community Affairs; Department of Health; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation; and the Agency for Workforce Innovation. The Executive Office of the Governor may appoint one nonvoting member. The remaining appointments, which have voting privileges of one member each, include: Florida Farm Bureau Federation; United Farm Workers (AFL-CIO); Florida Fruit and Vegetable Association; Florida Citrus Mutual; Farmworker Association of Florida; a non-profit entity that provides social services for migrant workers; representation for migrant non-profit housing interests; Farmworker Self-Help; and the Farm Labor Organizing Committee.

Section 4. Amends s. 450.231, F.S., to require the Legislative Commission on Migrant and Seasonal Labor to report its findings, recommendations, and proposed legislation to the Legislature no later than February 1 of each year, beginning in 2006.

Section 5. Amends s. 450.27, F.S., to rename part III of ch. 450, F.S., currently cited as the "Farm Labor Registration Law," to the "Farm Labor Contractor Registration Law."

[2] Section 450.221(1)(a)-(d), F.S.

Section 6. Amends s. 450.271, F.S., to substitute the Department of Business and Professional Regulation for the Department of Labor and Employment Security, which no longer exists, as the entity authorized to administer the federal Migrant and Seasonal Agricultural Worker Protection Act.

Section 7. Amends s. 450.28, F.S., to add the following definitions for purposes of the Farm Labor Contractor Registration law:

- "**Minor violation**" means a violation of a specific statute or rule which does not present an imminent threat to the health or welfare of an employee of a farm labor contractor.
- "**Major violation**" means a violation of a specific state or federal statute or rule which presents an imminent threat to the health, safety, or welfare of an employee of a farm labor contractor.

Section 8. Amends s. 450.30, F.S., to require an applicant for renewal of a certificate of registration as a farm labor contractor to retake the competency examination when convicted of or penalized for committing a major violation during the prior certification period. Requires the fees ($35 for each applicant) received from applicants for the education and examination program to be deposited into the Professional Regulation Trust Fund, rather than the Crew Chief Registration Trust Fund.

Section 9. Amends s. 450.31, F.S., to increase the application fee for a certificate of registration as a farm labor contractor from $75 to $125. Requires an applicant for a certificate of registration to designate an agent to receive service of process and other documents. Authorizes the Department of Professional Regulation (DBPR) to revoke, suspend, or deny a certificate of registration under certain specified circumstances. Provides that receipt and acceptance of a certificate of registration constitutes permission by the farm labor contractor for DBPR personnel to inspect books, ledgers, and all other documents related to the performance of the contractor's farm labor activities.

Section 10. Creates s. 450.321, F.S., to authorize the Department of Business and Professional Regulation (DBPR) to develop and implement a best practices incentive program for farm labor contractors. It provides that:

- DBPR may enter into a partnership agreement with a farm labor contractor regarding the responsibilities of each party;
- Recipients of a designation as a best practices farm labor contractor may use the designation to solicit business;
- DBPR may revoke the designation for failure to comply with requirements; when a designation is revoked, the prior recipient must cease all use of the best practices farm labor contractor designation when soliciting business;
- The grant of a designation as a best practices employer is not an endorsement by DBPR;
- DBPR is exempt from civil liability for damages resulting from the granting, denying, suspending, or revoking of a designation; and
- DBPR is required to establish an incentive program for contractors holding a valid designation.

Section 11. Amends s. 450.33, F.S., to revise the powers of the Department of Business and Professional Regulation regarding revocation of a contractor's certificate of registration. Adds maintenance of certain employee daily field records to the duties a farm labor contractor must perform.

Section 12. Amends s. 450.34, F.S., to prohibit a farm labor contractor from taking retaliatory action against any person who has filed a complaint or aided in an investigation. Prohibits a farm labor contractor from contracting with or employing certain persons who lack a valid certificate of registration issued by the Department of Business and Professional Regulation.

Section 13. Amends s. 450.35, F.S., to prohibit a person from contracting with or employing a farm labor contractor who does not have a certificate of registration. Provides that persons who violate this section are subject to the penalties provided in s. 450.38(1), F.S.

Section 14. Amends s. 450.37, F.S., to authorize the Department of Business and Professional Regulation to cooperate and enter into agreements with other state agencies to administer this chapter or secure uniform rules.

Section 15. Amends s. 450.38, F.S., to revise the penalties imposed for violations of part III of ch. 450, F.S. A minor violation is a misdemeanor of the second degree and a major violation is a felony of the third degree. Clarifies applicability of penalties to a firm, association, or corporation that commits a major violation. Increases the maximum civil penalty from $1,000 to $2,500 for each violation. Authorizes civil penalties or the revocation of registration if a contractor commits one or more minor violations. Provides that a farm labor contractor who commits a major violation of a specific statute or rule may be assessed a civil penalty of at least $750 for the first violation. A contractor who commits another major violation within two years after the first violation may be assessed at least $1,500 for the second violation, and no more than $2,500 for the third violation. DBPR may revoke the certificate of registration of a farm labor contractor who commits a major violation of a specific statute or rule four times within two years.

Section 16. Creates s. 450.39, F.S., to prohibit a farm labor contractor from requiring a farmworker to purchase goods or services solely from that farm labor contractor or a person acting as an agent for that farm labor contractor. Prohibits a farm labor contractor from charging a farmworker more than a reasonable cost for any commodity. Specifies that the term "reasonable cost" does not include a profit to the farm labor contractor or to any other person acting as an agent for the farm labor contractor.

Section 17. Amends s. 381.0087, F.S., to clarify that a person who willfully refuses a citation from personnel of the Department of Health commits a second-degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S. Requires the Department of Health to notify the proper enforcing entity of suspected violations.

Section 18. Amends s. 381.008, F.S., to redefine the term "residential migrant housing" to include structures rented or reserved for occupancy by five or more *seasonal* or migrant

farmworkers. Excludes from that definition a single-family residence or mobile home that is occupied only by a single family.

Section 19. Amends s. 381.0086, F.S., to require the Department of Health to include certain provisions relative to plan review of residential migrant housing in rules. Prohibits a structural variance for the purpose of filing an interstate clearance order with the Agency for Workforce Innovation.

Section 20. Amends s. 487.011, F.S., to provide that part I of ch. 487, F.S., may be cited as the "Florida Pesticide Law" and is to be administered by the Department of Agriculture and Consumer Services.

Sections 21-44. Amend ss. 487.012-487.175, F.S., making technical corrections changing the term "chapter" to "part," and make these sections conform to the portion of the committee substitute which creates part II of ch. 487, F.S.

Sections 45-48. Amend subsection (1) of s. 403.088, F.S., subsection (1) of s. 482.242, F.S., paragraph (x) of subsection (1) of s. 500.03, F.S., and subsections (1) and (6) of s. 570.44, F.S., to make technical corrections referring to part II of ch. 487, F.S., as created by the committee substitute.

Section 49. Creates s. 487.2011, F.S., to provide that part II of ch. 487, F.S., may be cited as the "Florida Agricultural Worker Safety Act," to be administered by the Department of Agriculture and Consumer Services (DACS).

This section also:

- Creates s. 487.2021, F.S., providing that it is the intent of the Legislature to ensure that agricultural workers are protected from and receive information about pesticides.
- Creates s. 487.2031, F.S., to provide definitions for the terms "agricultural employer," "agricultural establishment," "agricultural plant," "department," "designated representative," "fact sheet," "material safety data sheet," "retaliatory action," "trainer," and "worker."
- Creates s. 487.2041, F.S., to require DACS to continue, to the extent that resources are available, to operate under the regulations established by the federal Environmental Protection Agency's Labeling Requirement for Pesticides and Devices and the Worker Protection Standard.
- Creates s. 487.2051, F.S., to require agricultural employers to make available to a worker certain information on agricultural pesticides. Requires the information to be in the form of a fact sheet or a material safety data sheet. Requires that such information be provided to a worker within two working days after the request by a worker, a designated representative of the worker, or medical personnel treating the worker. Upon the initial purchase of a product and with the first purchase after the material safety data sheet is updated, the distributor, manufacturer, or importer of any agricultural pesticide shall obtain or develop and provide each direct purchaser of an agricultural pesticide with a material safety data sheet. Requires DACS to design and make available to a trainer a one-page general agricultural pesticide safety sheet. Requires the safety sheet to be in a language understood by the worker and must include, but need not be limited to, illustrated instructions on prevention of agricultural pesticide exposure and toll-free numbers to the Florida Poison Control Centers.

- Creates s. 487.2061, F.S., to prohibit any person covered by this part to fail to provide required pesticide information or to take any retaliatory action.
- Creates s. 487.2071, F.S., to provide for penalties against any person who violates the provisions of this part. Provides that a worker who has been subject to retaliatory action and seeks relief may file a complaint with DACS. Requires DACS to monitor complaints of retaliation and to report its findings to the Legislature on or before October 1, 2008. Requires the report to include the number of complaints received, the circumstances surrounding the complaints, and the action taken concerning the complaints.

Section 50. Requests the Division of Statutory Revision to designate s. 487.011 through s. 487.175, F.S., as part I of ch. 487, F.S., entitled the "Florida Pesticide Law," and s. 487.2011, F.S., through s. 487.2071, F.S., as created by this act, as part II of that chapter, entitled the "Florida Agricultural Worker Safety Act."

Section 51. Provides that this act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

See Private Sector Impact, below.

B. Private Sector Impact:

The committee substitute increases the application fee for a certificate of registration as a farm labor contractor from $75 to $125. It also increases the maximum civil penalty from $1,000 to $2,500 for each violation of part III of ch. 450, F.S.

Agricultural employers will be required to furnish general pesticide safety information and a written document that provides technical information about specific agricultural pesticides to workers. Estimated costs for these requirements are unknown.

C. Government Sector Impact:

The migrant labor program has not been self-supporting under the current fee level and has been supplemented with general revenue funding. An increase in the farm labor contractor certificate of registration fee from $75 to $125 will increase revenue to the Professional Regulation Trust Fund. According to the Department of Business and Professional Regulation, up to 15 percent of the current licensees may opt not to register as a result of this fee increase. Using the department's figures, since there are 3,600 current licensees, this would translate to a decrease of about 540 license applications.

	Department of Business and Professional Regulation			
	Fund	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
REVENUES:				
Certificate of registration fee increase of $50 x 3,060	PRTF	$153,000	$153,000	$153,000
EXPENDITURES:				
Non-Operating:				
Service Charge General Revenue		Increase of $11,169	Increase of $11,169	Increase of $11,169

The committee substitute also raises the civil penalties for major violations from $1,000 to $2,500 and creates penalties for minor violations that, to the extent imposed, will increase revenue deposited into the General Revenue Fund.

The Department of Agriculture and Consumer Services is requesting six FTE positions and associated costs to: (1) provide investigation and enforcement response staff to handle an anticipated increase in complaints; (2) proactively provide training and outreach to the regulated community for program implementation; (3) prepare and develop safety information and manage program information relating to complaints, investigations and enforcement actions; and (4) handle requests for information, correspondence, mailings and other related administrative matters.

	Department of Agriculture and Consumer Services			
	Fund	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
REVENUES:		**0**	**0**	**0**
EXPENDITURES:				
Recurring:				
2 Environmental Specialist III	GR	102,284	102,284	102,284
4 Environmental Specialist II	GR	184,906	184,906	184,906
6 Standard Expense Packages	GR	59,490	41,124	41,124
4 Motor Vehicles	GR	80,000	0	0
Technology Maintenance Costs	GR	2,700	2,700	2,700

Non-Recurring:

6 Standard Professional Pkg.	GR	9,000	0	0
Application Development for Pesticide Complaints	GR	31,510	0	0
TOTAL EXPENDITURES:	**GR**	**$469,890**	**$331,014**	**$331,014**

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for SB 2954

Amendment No. 1 282060

CHAMBER ACTION

Senate | House

04 APR -8 PM 1:42

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Senator Dockery moved the following amendment:

Senate Amendment (with title amendment)

On page 54, line 20,

insert:

Section 51. For the 2004-05 fiscal year, the sum of $469,890 is appropriated from the General Revenue Fund, and six positions are authorized, to the Department of Agriculture and Consumer Services for the purpose of conducting training and outreach activities related to migrant labor.

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 5, line 24, after the semicolon

insert:

providing an appropriation and authorizing

positions;

4

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 160

SPONSOR: Judiciary Committee, Children and Families Committee and Senator Lynn

SUBJECT: Child Support

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.	Brown	Lang	JU	Fav/CS
3.			FT	Withdrawn
4.	Blizzard	Hayes	AGG	
5.			AP	
6.				

I. Summary:

The bill sets forth the following provisions relating to child support:

- Amends a series of statutes relating to the administrative establishment of child support to recognize administrative support orders, the venue criteria, the process required for a noncustodial parent to request to proceed in circuit court, to reflect the current practice relative to establishing account numbers, and to direct challenges to income deduction orders issued through the administrative process to the Department of Revenue instead of the court;
- Deletes the requirement that the social security numbers of the children be provided on child support orders;
- When there are arrearages, retroactive support, delinquency and costs owed by the payor, provides for continued payment of the full child support obligation after the child emancipates to more quickly repay the arrearages;
- Provides that when a child support order exists for payment of multiple children together, and an obligation ceases against a child, the full obligation continues if there are arrearages or other costs owed.
- Stipulates the process for establishing a depository account for interstate Title IV-D cases;
- Amends the Child Support Enforcement Application and Program Revenue Trust Fund to reflect the current purpose, composition, and function of the trust fund;
- Permits a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury;
- Amends the processing of undistributable collections relative to the noncustodial parent's role in applying such collections to other support cases;
- Provides a procedure for the non-custodial parent to request a circuit court proceeding;

- Revises the conditions under which a mother receiving public assistance is deemed noncooperative relative to child support establishment;
- Amends the process for liquidating securities for the purpose of meeting a past due support obligation;
- Extends the date for OPPAGA to submit an evaluation report on the statewide implementation of administrative processes relating to child support;
- Creates an insurance claim data exchange to provide for the identification of settlement payments on insurance liability claims which can then be applied to child support arrearages in Title IV-D cases, on a permissive basis by the insurance entity, grants immunity to insurers who participate, and provides a monetary threshold;
- Permits the use of private process servers for the initial service of process;
- Expands the business and professional licenses for which the Department of Revenue has authority to seek denial or suspension to include all licenses issued by a state or local government licensing authority;
- Requires the Department of Revenue and Department of Corrections to jointly develop a plan for facilitating improved child support payments from incarcerated noncustodial parents upon their release.

This bill substantially amends sections 61.046, 61.13, 61.1301, 61.14, 61.181, 61.1814, 120.80, 382.013, 382.016, 409.2558, 409.2561, 409.2563, 409.25656, 409.257, 409.2572, 409.259, 409.2598, and 742.10 of the Florida Statutes. It also creates sections 409.25659 and 409.25662 of the Florida Statutes.

This bill is linked to SB 2826, a public records bill.

II. Present Situation:

General Background

Federal statutes provide guidance for states in establishing child support enforcement programs. Federal child support enforcement started with the enactment of Title IV-D of the Social Security Act, the Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. The Social Security Act requires states to establish Title IV-D child support enforcement agencies, serving both recipients and non-recipients of welfare benefits. The Office of Child Support Enforcement is charged with monitoring and assisting the state agencies. Each state is required to establish formulas for calculating child support orders, as guiding, but non-binding authority on the courts. The Family Support Act did create a rebuttable presumption that the formula is correct, however. Federal statutes include a list of penalties to be imposed on state governments for failure to establish child support enforcement programs. Therefore, states are under a considerable incentive to conform to federal mandate.[1]

[1] Karen Gievers, *Listening to Silenced Voices: Examining Potential Liability of State and Private Agencies for Child Support Enforcement Violations*, 25 Nova L. Rev. 693, 697-700.

Administrative Establishment of Child Support Orders

The 2001 Legislature created a pilot program in Volusia County for the administrative establishment of child support (ch. 2001-158, L.O.F.). The next year, ch. 2002-239, L.O.F., provided for the statewide application and implementation of this administrative child support establishment process. This process, which is set forth in s. 409.2563, F.S., allows the Department of Revenue to establish child support orders administratively, in lieu of a judicial proceeding, for Title IV-D cases when paternity is not an issue. In implementing this administrative child support establishment process statewide, the following inconsistencies between the administrative process and current statutes or other required procedures, as well as potential problems, have been identified by the Department of Revenue:

- The definitions in ch. 61, F.S., do not currently recognize the administrative support orders established by the department, only the orders issued by the courts. However, the provisions of ch. 61, F.S., govern aspects of the establishment of the administrative child support obligation and enforcement of these orders in addition to s. 409.2563, F.S. For example, the administrative support order is required to stipulate the obligation of the non-custodial parent to provide for the health care needs of the child, but the specifics for Title IV-D orders as it relates to providing the required health care is provided for in s. 61.13(1)(b), F.S. In addition, the income deduction orders to be included in the administrative support orders are specifically delineated in s. 61.1301, F.S. Section 409.2561, F.S., regarding the child support obligation created when public assistance is received also only recognizes court orders, not the administrative orders.
- Administrative child support orders are to incorporate an income deduction order pursuant to s. 61.1301, F.S. Separate from the administrative hearing that may be requested by the noncustodial parent to contest the entry of the administrative support order in s. 409.2563, F.S. Section 61.1301(2)(c), F.S., provides the noncustodial parent the opportunity to request a hearing to contest the enforcement of the income deduction order. However, the statute currently only provides for the noncustodial parent to apply to the court for a hearing.
- If a noncustodial parent chooses to proceed in circuit court for the determination of the child support obligation or to address issues concerning child custody or rights of parental contact, s. 409.2563(4)(m), F.S., requires that a waiver of service be sent to the noncustodial parent by regular mail and signed prior to the case being filed in circuit court. However, the rules of civil procedure require that the waiver of service be sent by certified mail and signed after the case is filed in court. The language is also not clear that the department will not provide legal representation for issues that are not eligible for federal financial participation, i.e., issues concerning custody or rights of parental contact.
- The noncustodial parent may request a hearing of the administrative support order proposed by the department. Such hearings are conducted by the Division of Administrative Hearings and governed by ch. 120, F.S., and the Uniform Rules of Procedures, unless stipulated otherwise. Chapter 28-106.207 of the Uniform Rules of Procedures requires that the hearing be held where the non-governmental party affected by the agency action is located, i.e., most likely interpreted as the noncustodial parent, or the most convenient place for most parties. The venue applied for Title IV-D cases handled through the court system is the judicial circuit where the custodial parent resides. Noncustodial parents may request to use the court system for custody and determination

of parental visitation, at which time venue under the administrative process would differ from that of the court process.

Income Deduction

Florida law incorporates the provisions of the federal Consumer Credit Protection Act as relates to income deduction and only provides for a restriction on the amount of income that can be garnished under such an order.[2] As such, the restrictions contained in the Consumer Protection Act do not establish a maximum amount of child support that can be assessed by a court, but only address, and provide a cap for, that which is garnished.[3] The maximum part of the aggregate disposable earning of an individual for any workweek which is allowable through garnishment cannot exceed 60 percent of a person's disposable weekly earnings.[4] The court in *Garcia v. Garcia* ruled an income deduction order requiring an employer to withhold 100 percent of a payor's net pay facially defective, in violation of both statutory authority and the federal Consumer Credit Protection Act.[5]

Social Security Numbers of Court Orders

Section 61.13(10), F.S., requires each party of a child support order to provide his or her social security number, as well as the social security numbers of the minor children. These social security numbers are to be maintained by the depository in a separate attachment in the file and are only to be disclosed to the extent required for the administration of the Title IV-D program. However, s. 61.13(1)(d), F.S., specifically requires that the actual child support orders contain the name, date of birth, and social security number of each of the children who are subjects of the order and, thus, makes the social security number of the minor children public. This provision conflicts with the limited disclosure provided for children's social security numbers in s. 61.13(10), F.S., and treats the children's social security numbers differently from the adult's social security numbers.

The issue of the confidentiality of social security numbers was specifically addressed during the 2002 session with the passage of ch. 2002-256, L.O.F. With this legislation, the Legislature recognized that the social security number can be used to acquire sensitive personal, financial, medical, or familial information and to perpetrate fraud. Social security numbers held by an agency were made confidential and exempt from public disclosure, with certain exceptions.

Payment of Arrearages after Emancipation

In general, child support is considered to be a court-imposed vested obligation. As such, a custodial parent's right to payment of child support in arrears is vested, and is not subject to retroactive modification. In *Puglia v. Puglia*, 600 So.2d 484 (Fla. Dist. Ct. App. 1992), the court held that a father could not adjust the amount of his arrearage based on the fact that the child had resided with him over time, without court approval and a prior request through a Modification of

[2] s. 61.30(1)(a), F.S.
[3] Leonard D. Pertnoy, *Post-Judgment Relief in Domestic Relations Cases: Does This Process Ever End*, 25 Am. J. Trial Advoc. 69, 89 (2001).
[4] s. 61.1301(2)(e), F.S.
[5] 560 So.2d 403, 404-405 (Fla. Dist. Ct. App. 1990).

Child Support Agreement.[6] The court in *Florida v. Segrera* affirmed this ruling, providing that as child support obligations are the vested rights of the payee, modifications can only take effect prospectively.[7] Still, in order to modify the agreement, the burden is on the party requesting a change to show a change in circumstances that is substantive, material, involuntary and permanent in nature.[8]

Regarding a child's emancipation, it is reported by the Department of Revenue that when the last child who is subject to a child support order emancipates and the support obligation includes an amount to be paid toward the arrearage, the payment made by the noncustodial parent is limited to the amount of the existing arrearage payment because their obligation to continue to support the child has ceased. The amount of the arrearage is reported as typically between ten to twenty percent of the monthly obligation. For those noncustodial parents with income deduction orders, s. 61.1301(1)(b)2., F.S., provides that income deduction orders are to direct the employer to withhold an additional twenty percent or more of the monthly amount for the arrearage and other fees and costs owed. Without the obligation to pay the monthly support amount, the noncustodial parent is often able to pay more on the arrearages and repay the arrearages sooner than would be possible with the twenty percent amount. Currently, for Title IV-D cases, the Department of Revenue must seek judicial approval to increase the obligation towards arrearages.

Depository Accounts for Interstate Cases

Interstate child support cases often require the Florida State Disbursement Unit to accept and disburse payments under another state's order (s. 88.3191, F.S.). While many of these support orders from other states have been registered in a Florida court, registration is not required for the support enforcement agency to enforce the support order (s. 88.5071, F.S.).
Section 61.181, F.S., requires the clerk of the court to establish a depository for support payments and requires the depository to participate in the State Disbursement Unit which is responsible for the collection and disbursement of support payments. One function resulting from the registering of a case with the court is the directive to establish a depository account for the receipt and disbursement of the support payments. For interstate child support cases that are not registered with a Florida court, it is reported by the Department of Revenue that there is not a clearly stipulated process for establishing the depository accounts which can delay processing the support payment.

Child Support Enforcement Application and Program Revenue Trust Fund

Section 61.1814, F.S., provides for the creation of the Child Support Enforcement Application and Program Revenue Trust Fund. This trust fund is to be used for the deposit of application fees of nonpublic assistance applicants for child support enforcement services and for fines imposed both for failure to comply with a subpoena for information necessary to establish, modify, or enforce a child support order pursuant to s. 409.2564(8), F.S., and for failure to respond to a written request for information on the employment compensation and benefits of an employee who has a child support obligation pursuant to s. 409.2578, F.S. The Department of Revenue is

[6] *Id at* 485.
[7] 661 So. 2d 922, 923 (Fla. Dist. Ct. App. 1995).
[8] In re Marriage of Johnson, 352 So.2d 140, 141 (Fla. Dist. Ct. App. 1977).

responsible for the administration of the fund and reports that additional program income is deposited into this trust fund which is not reflected in the statute. Further, s. 61.1814, F.S., currently does not provide for the disposition of the federal share of the program income, investment authority, the disposition of proceeds of investment activity, the disposition of unencumbered cash at the end of the fiscal year, or the purpose of the trust fund.

The Legislature has articulated statutory criteria governing the establishment of trust funds. Section 215.3207, F.S., requires that statutory language creating a trust fund must, at a minimum, specify the following: the name of the trust fund, the agency or branch of government responsible for the administration of the trust fund, the requirements or purposes that the trust fund is established to meet, and the sources of moneys or receipts to be credited to or deposited in the trust fund.

Acknowledgement of Paternity

Section 742.10, F.S., provides for the methods by which paternity may be established for children born out of wedlock and includes determination and establishment of paternity through an adjudicatory hearing, the execution of a stipulation of paternity or an affidavit acknowledging paternity by both parties that is then filed with the clerk of the court, and the execution of a voluntary notarized acknowledgement of paternity by both parties. A voluntary acknowledgment of paternity may be executed by both the mother and father at the time of birth [s. 382.013(2)(c), F.S.] for inclusion of the father's name on the birth certificate or at a later time to amend the birth certificate to add the father's name (s. 382.016, F.S.). Such acknowledgments of paternity are required to be notarized which has presented barriers to the establishment of paternity, especially at the time of birth. Specifically, it is reported by the Department of Revenue that hospitals and other birth facilities do not always have a notary available at the time the parents are prepared to execute the acknowledgment of paternity and that the parents often do not have the required identification when a document is being notarized, resulting in missed opportunities to establish paternity.

Allocation of Undistributable Collections

Chapter 2001-158, L.O.F., created a framework for processing unidentifiable and undistributable collections in s. 409.2558, F.S. For undistributable collections, the department is directed to establish by rule a method for determining if a collection is undistributable to the final intended recipient. An order of priority for processing undistributable collections is delineated as follows: applying the payment to arrears on the custodial parent's case, applying the payment to any court ordered administrative costs associated with the custodial parent's case, applying the payment to another case with a different custodial parent with the noncustodial parent's permission, refunding the payment to the noncustodial parent, and, finally, if the noncustodial parent cannot be located, transferring the state share to General Revenue and crediting the federal share to the federal government. Based on the options for processing the undistributable funds, a noncustodial parent could be refunded the undistributable collection when child support in another case is owed by refusing to grant permission to apply the collection to the other case.

Public Assistance Recipient Cooperation

By accepting public assistance, recipients are creating an obligation for the assistance received to be reimbursed by the child support collected (s. 409.2561, F.S.). Individuals receiving public assistance are required in s. 409.2572, F.S., to cooperate with the Department of Revenue, including, but limited to, in identifying the father, establishing paternity, and obtaining support payments. Failure to cooperate as required by s. 409.2572, F.S., results in the recipient being deemed ineligible to receive the public assistance. Section 409.2572(2)(a), F.S., provides that if a mother identifies the possible fathers, asserts these are the only individuals who could be the fathers, and subsequent scientific tests determine that none of the identified fathers are in fact the father, the mother will be deemed noncooperative and will be ineligible to receive public assistance until the father has been identified and scientific tests have not excluded him as the father.

This application of noncooperation has been found by both state and federal courts to be inconsistent with the definition of noncooperation in federal law (*B.K. v. Department of Health and Rehabilitative Services*, 537 So.2d 633, Fla. 1st DCA 1989; *Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130, Fla. 1st DCA 1992; and *Thomas v. Rubin*, 926 F.2d 906, 9th Cir. 1991). A recipient's statement under oath affirming her lack of additional information about another possible father establishes cooperation (*Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130, Fla. 1st DCA 1992).

Section 409.2572, F.S., also references an outdated scientific method for identifying the father. In actual practice, the use of blood samples to confirm paternity has been replaced with the use of DNA samples.

Liquidation of Securities Glitch

Section 409.25656, F.S., provides that when an individual has a support obligation that is subject to enforcement by the Department of Revenue as the state Title IV-D agency, the executive director or his designee may, after the required notice and within the specified time frame, levy upon any credit or personal property, including securities. Those entities in possession or control of such credits or personal property of the obligor are required to either transfer the credits or personal property to the department to be used to pay past due support or to pay to the department the amount owed to the obligor. Chapter 2002-173, L.O.F., amended s. 409.25656, F.S., to provide for a process and directive to security dealers for liquidating securities. The process created for those circumstances in which the value of the securities exceeds the amount of the past due child support, gives the noncustodial parent an opportunity to provide instructions as to which securities to sell. Without such instruction, the securities dealer is directed to liquidate the securities for the amount of the overdue support, less applicable commission and fees. However, as currently worded, the statutory language does not permit the full amount of both the overdue support and the applicable commission and fees to be liquidated for payment to the department and to the securities dealer.

Identification of Insurance Claims

The authority provided to the department in s. 409.25656, F.S., to levy any credit or personal property for any past due child support owed by an obligor also applies to several other types of assets and funds, such as bank accounts, vehicles, and insurance claim payments. Mechanisms have been established to identify some of these assets and funds when owned by or being provided to an obligor owing past due child support and, in some instances, mechanisms have also been authorized for the transferring of identified funds to the department to be applied to the past due support. For example, s. 409.25657 and s. 409.25658, F.S., provide mechanisms to enable financial institutions and the Department of Banking and Finance to identify obligors with past due child support and either provide the Department of Revenue with information on bank accounts of obligors with overdue amounts or to transfer unclaimed property owed by the obligor to the department. However, current statute does not require insurers to make efforts to identify obligors with past-due support and remit claim payments to the department.

A number of states are participating in the Child Support Lien Network which is a network of child support agencies operating collectively to secure insurance asset information and enforce the collection of past due support. The Child Support Lien Network has developed working arrangements with a number of insurance carriers to exchange data and match cases, which is used to identify obligors with past due support who have filed workers' compensation and personal injury lines of insurance. Florida has participated in this network since July 2002. However, it is reported by the Department of Revenue that a major portion of the insurance carriers in Florida do not have arrangements with the Child Support Lien Network to share data from which to match cases.

Service of Process

When a noncustodial parent is located and the next appropriate action necessary to establish, modify, or enforce an order is to proceed in circuit court, a summons is issued to attempt service of process of the notice of court action. Section 409.257, F.S., requires that the Sheriff be used to serve the notice. If the Sheriff is unsuccessful, the subsequent summons issued can be sent to either the Sheriff or a private process server for service. There are case situations where requesting a private process server for the initial summons may be more efficient. One such example is when the noncustodial parent resides in one county but works in another county.

Clerk of Court Filing Fees

Section 409.259, F.S., sets forth the Department of Revenue's rate of payment to each clerk of the court for filing civil actions or proceedings for child support. Specifically, the clerk is to be reimbursed at the federal financial participation prevailing rate on $40 for each civil action or proceeding filed for the non-public assistance Title IV-E cases. The department and the clerk are required to maintain a monthly log of cases eligible for reimbursement. This log is used to determine the number of $40 filings for which the clerk may be reimbursed. Sections 61.181(1) and 61.1826(2) and (4), F.S., provide for cooperative agreements between the department and each of the clerks of the court for the provision of the various services performed by the clerks in support of child support enforcement. Effective June 30, 2002, the costs for filings were included in these cooperative agreements.

Business and Professional License Suspensions

One of the enforcement mechanisms currently provided to the Department of Revenue is the suspension or denial of certain business or professional licenses, registrations, or certificates. Specifically, s. 409.2598, F.S., authorizes the Department of Revenue to petition the court for the denial or suspension of the licenses, registrations, or certificates of a noncustodial parent who is delinquent in the payment of child support or who fails to respond to an order relating to paternity or support proceedings. Currently, the licenses, registrations, or certificates to which the department's authority to seek denial or suspension applies are as follows: health professions and occupations regulated by ch. 456, F.S., teachers certified under ch. 1012, F.S., fishing and hunting licenses and permits issued under ch. 370, F.S., and ch. 372, F.S., vessel registrations issued under s. 328.42, F.S., the professions regulated pursuant to ch. 455, F.S., and motor vehicle repairer, travel agent, and business salesperson regulated under ch. 559, F.S. Section 409.2598, F.S., authorizes the department to screen applicants for new or renewed licenses, registrations, or certificates. A process for providing notice to noncustodial parents regarding their support delinquency or their failure to comply to orders relative to paternity or child support proceedings and the impending action to deny or suspend a license, registration, or certificate is set forth in this section. This enforcement mechanism is not available to the Department of Revenue until after all other remedies have been exhausted. This provision further set forth circumstances in which it may be inappropriate for the court to deny or suspend a license, registration, or certificate.

Incarcerated Noncustodial Parents

Nationally, there are approximately 1.5 million children who have a parent who is currently incarcerated and 10 million children who had a parent incarcerated at some point in their lives.[9] Noncustodial parents who are incarcerated are usually not meeting their child support obligation during the incarceration. Reintegration issues make reestablishing payments of child support upon release difficult, including inadequate job skills that make becoming economically self-sufficient difficult, the arrearages that have accumulated during the incarceration which seem overwhelming, and the minimal sense of responsibility for the children due to the noncustodial parents' lack of understanding of their rights and obligations and little contact with their children prior to incarceration.[10] A match of case records in Colorado between the Department of Corrections and Division of Child Support Enforcement revealed that approximately 30 percent of the 20,269 inmates and parolees in Colorado were noncustodial parents who had a child support obligation. These inmates represented 4 to 5 percent of Colorado's child support enforcement caseload and 3.8 percent of the child support arrearages totaling over $53 million in unpaid support.[11] Similar data are not available in Florida. Incarcerated noncustodial parents are obligors whose location is known and, therefore, can be easily targeted for improving payment of child support upon release. Some states, such as Colorado, are starting to initiate efforts to

[9] *Every Door Closed: Facts About Parents with Criminal Records*, Center for Law and Social Policy and Community Legal Services, Inc., No. 1 of 8.
[10] Sachs, Heidi, *Support Services for Incarcerated and Released Noncustodial Parents*, Welfare Information Network Issue Notes, Vol. 4, No. 6, June 2000, pp. 1-2.
[11] Pearson, Jessica, and Hardaway, Chris, *Designing Programs for Incarcerated and Paroled Obligors*, Welfare Information Network Expanded Case Study, Vol. 1 No. 1, August 2000, p. 2.

address child support issues that incarcerated noncustodial parents face so they can leave their incarceration prepared and capable of paying child support.

III. Effect of Proposed Changes:

Administrative Establishment of Child Support Orders

The bill amends a series of statutes to address the inconsistencies identified as it relates to recognizing administrative support orders and potential problems in the process. First, the definition of "support order" in s. 61.046, F.S., is amended to reflect not only orders for support issued by the court but also orders issued by an administrative agency of competent jurisdiction. This definition is applicable throughout ch. 61, F.S., and will, therefore, recognize the administrative support order issued by the Department of Revenue, in addition to the orders issued by the courts. Second, references to court orders of support as it applies to the child support obligation when public assistance is paid in s. 409.2561, F.S., is revised to reflect support orders generically or the establishment of support obligation by either the court or the department as provided for in s. 409.2563, F.S. Third, s. 120.80, F.S., is amended to provide for specific criteria for establishing venue for hearings held by the Division of Administrative Hearings relating to proceedings for administrative support orders. Specifically, hearings held pursuant to s. 409.2563, F.S., are to be held in the judicial circuit where the person receiving the Title IV-D services (i.e., usually the custodial parent) resides or if this person does not live in Florida, the judicial circuit where the noncustodial parent lives. The hearing may be held in another location, if agreed to by the department and respondent. Also, the authority of the administrative law judge to conduct the hearings by telephone or videoconferencing is stipulated. Section 409.263(4), F.S., that delineates the process required for a noncustodial parent to request to proceed in circuit court in lieu of the administrative process, is modified to clarify that the noncustodial parent may request to proceed in circuit court either to determine the support obligation or to address issues of custody or rights of parental contact; to require that the waiver of service be signed after the action is filed in circuit court; to remove the method of serving the waiver and, instead, provide that the referenced documents will be sent in accordance with the Rules of Civil Procedure; and to clarify that the department's participation in hearings in circuit court are limited to issues that are reimbursable under Title IV-D of the Social Security Act. Subsequent to the non-custodial parent's timely filed written request to proceed in circuit court, the administrative proceeding ceases. The current practice of notifying the depository when the administrative support order establishment process is initiated and of the depository assigning an account number at that time is articulated in s. 409.263(8), F.S. Finally, an individual whose support order was issued through the administrative process in s. 409.2563, F.S., and who wishes to contest an income deduction order, pursuant to s. 61.1301, F.S., is directed by the bill to file a petition with the Department of Revenue for an administrative hearing, in lieu of applying to the court for a hearing.

Social Security Numbers on Court Orders

The requirement that social security numbers be provided for minor children on all child support orders is deleted from s. 61.13(1)(d), F.S. Pursuant to s. 61.13(10), F.S., the social security number will still be obtained but will be maintained as a separate document. This amendment

would eliminate the conflict between s. 61.13(1)(d), F.S., and s. 61.13(10), F.S., and provide the same protection to the children's social security numbers as is provided to the adult's social security number.

Payment of Arrearages after Emancipation

The bill establishes in s. 61.14, F.S., the reported practice regarding the termination of the child support obligation when that child emancipates, or more specifically the child reaches the age of 18 years or the disability of non age is removed, unless otherwise ordered by the court or agreed to by the parties. The continued obligation to pay any arrearages, retroactive support, delinquency, or costs owed by the obligor is stipulated. The bill provides that in Title IV-D cases, when the current child support obligation is reduced or terminated due to the emancipation of a child and the obligor owes arrearages, retroactive support, delinquency, or costs, the obligor will be required to pay the support at the same rate that was effective prior to the emancipation until all arrearages, retroactive support, delinquency, and costs are paid in full or the order is modified. Section 61.1301, F.S., is also amended to provide that the full income deduction continues after the emancipation of a child if the Title IV-D noncustodial parent owes any arrearage, retroactive support, delinquency, or costs. This directive is included in the subsection that identifies the content of the income deduction order, the notice of rights to the obligor, the notice to the payor, and as a stated policy for collection of arrearages in Title IV-D cases. The obligor is to be notified of his or her right to request a modification of the income deduction order. The bill specifically stipulates in s. 61.1301, F.S., and s. 61.14, F.S., that this continuation of the pre-emancipation payment amount is a remedy for collection of unpaid support and applies to orders entered before, on, or after July 1, 2004. In cases of child support where multiple children are provided for as a group (rather than individually assessed for purposes of child support), and a child becomes an adult or is emancipated, the child support obligation in full continues if there are arrearages, retroactive support, delinquency and costs owed.

Depository Accounts for Interstate Cases

The bill amends s.61.181, F.S., to stipulate the process for establishing a depository account for the receipt and disbursement of interstate support payments for Title IV-D cases. The department is directed to request the depository to establish an account and provide a copy of the other state's order with the request. The depository is directed to provide the account number to the department within 4 business days of receipt of the request.

Child Support Enforcement Application and Program Revenue Trust Fund

Section 61.1814, F.S., is amended to reflect current purpose, composition, and function of the Child Support Enforcement Application and Program Revenue Trust Fund. Specifically, the bill expands the definition of the trust fund to include all program incomes that are currently being deposited into the trust fund. The program incomes being added are court ordered costs recovered from child support obligors, interest on child support collections, and the portion of the fees permitted to be charged on non Title IV-D cases that are processed by the State Disbursement Unit and that are not retained by the clerks. Each type of program income is required to be accounted for separately. The bill articulates the purpose of the trust fund which is to account for Title IV-D program income and to support the child support enforcement program

activities. The department is permitted by the bill to invest the money in the trust fund, retain all interest earnings, and retain any balance in the trust fund at the end of the fiscal year to use for the purpose of the trust fund.

Acknowledgement of Paternity

Sections 382.013, 382.016, and 742.10, F.S., are each amended to permit a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury pursuant to s. 90.525.(2), F.S. With these amendments, a voluntary acknowledgment of paternity is no longer required to be notarized. Instead, a voluntary acknowledgment that is witnessed by two individuals and signed under penalty of perjury is set forth as a form of acknowledgment that is accepted as a valid affidavit for adding the father's name to the birth certificate at the time of birth, for amending the birth certificate after the birth to add the father's name, and for establishing paternity for children born out of wedlock.

Allocation of Undistributable Collections

The options available for processing undistributable collections in s. 409.2558, F.S., are amended to remove the requirement that the noncustodial parent's permission be obtained before applying the undistributable collection to another case where child support is owed. In lieu of obtaining permission, the noncustodial parent is to be provided notice of the impending intention to apply the collection to another case and of the noncustodial parent's right to contest the department's intended actions in court. In order to exert this right to contest, the noncustodial parent must file and serve a petition on the department within 30 days of the mailing of the notice. The bill further provides that if there is more than one other child support case for which the noncustodial parent owes support, the undistributable amount is to be allocated based on the method stipulated in s. 61.1301(4)(c), F.S. Specifically, s. 61.1301(4)(c), F.S., provides that the percentage to be allocated to each family is determined by dividing each support obligation by the total of all support obligations.

Public Assistance Recipient Cooperation

Section 409.2572, F.S., is amended to remove the requirement that a mother is deemed noncooperative and ineligible for public assistance until a subsequent father is identified and confirmed through scientific testing to be the father if the possible fathers initially identified are determined not to be the fathers. The bill recognizes good faith efforts and provides that noncooperation is refusing, but not failing, to identify the father. With these amendments, the mother will be deemed to be cooperative pending the outcome of the scientific testing of the subsequently named potential father or if she attests to the lack of information regarding the identity of the father of the child. This amendment will conform Florida Statute to federal law and federal and state appellate court case law. Section 409.2572, F.S., is also amended to replace the drawing of blood samples to confirm paternity with the current method of using DNA samples.

Liquidation of Securities Glitch

Section 409.25656, F.S., is amended to allow for the securities which are to be used for the purpose of meeting an obligation of past due support to be liquidated in an amount that is sufficient to cover both the past due support and any applicable commissions and fees.

OPPAGA Report

The deadline for OPPAGA to submit an evaluation report on the statewide implementation of the administrative processes for establishing child support is extended to June 30, 2006.

Identification of Insurance Claims

Section 409.25659, F.S., is created to provide for the identification of claims on liability insurance which can then be applied to child support arrearages in Title IV-D cases. Specifically, s. 409.25659, F.S., directs the Department of Revenue to develop and operate a data match system which would identify noncustodial parents who owe past due child support and also have a claim with an insurer. This system is to be developed in consultation with at least one insurer and is to use automated data exchanges to the extent possible. The bill creates a process for insurers to provide the department with certain information of noncustodial parents whom they identify have a claim. Insurers participate on a voluntary basis. A monetary threshold is established limiting garnishment of liability claims to those cases where bodily injury exceeds $3,000. Three options are provided by the bill for insurers to comply with this requirement: authorizing the department to obtain the information through an insurance data collection organization with which the insurer participates and submits the required claim data at least monthly; providing data on each claim electronically to the department; or receiving a data file from the department, conducting a data match, and subsequently providing the required information. Insurers that are subject to this section are entities that fall under one of the following categories of insurers: insurers authorized to transact insurance in Florida who are engaged as indemnitors, surety, or contractors in the insurance or annuity business, pursuant to s. 624.03, F.S.; eligible surplus lines insurers as provided for in Part VIII of ch. 626, F.S.; joint underwriters or joint insurers subject to s. 627.311, F.S.; and insurance risk apportionment plans operating pursuant to s. 627.351, F.S. An insurer may request a fee for conducting the data match. The department is to establish a standard fee in rule for conducting the data match which is not to exceed actual costs. The bill provides immunity to an insurer and any central reporting organization, as well as their employees and agents, from any liability for damages, whether actual or alleged, that is the result of such entity's compliance with this provision. Use of data by insurers is restricted. Finally, the Department of Revenue is authorized to adopt rules to administer this insurance claim data exchange section.

Service of Process

Section 409.257, F.S., is amended to permit the use of other means of service of process as provided for by ch. 48, F.S., if determined by the department to be more effective. This amendment will allow for the use of a private process service with the initial service of process under certain circumstances.

Clerk of Court Filing Fees

Section 409.259, F.S., is amended to reflect the current arrangement between the clerks and the department for reimbursement for filings through the cooperative agreements pursuant to ss. 61.181(1), and 61.1826(2) and (4), F.S., instead by separate billings for each of the filings.

Business and Professional License Suspensions

The bill expands the licenses for which the Department of Revenue has authority to seek denial or suspension to include all licenses issued by a state or local government licensing authority. Specifically, the bill replaces the references to specific chapters for which the department has current authority to seek denial or suspension of licensure, registration or certificates in s. 409.2598, F.S., with definitions of "license", licensee" and "licensing agency". These definitions incorporate any license, permit, certificate, registration, franchise, or other form of written permission that authorizes an individual to engage in either an occupation, business, trade, or profession or in a recreational activity when issued by a licensing agency. A licensing agency includes any department, commission, agency, or other subdivision of a state or local government that issues licenses. The licenses to which the department could seek a petition in court for denial or suspension are expanded and include, but are not necessarily limited to, the following: child care facilities; aquaculture professions; private investigators; security officers and related occupations; drinking water treatment plant operators; insurance agents and other insurance related occupations; securities and finance related professions such as mortgage brokers and collection agencies; occupations regulated by the State Fire Marshall such as fire equipment dealers, explosive dealers, and fireworks manufacturers; and law enforcement officers.

The bill removes the subsection that authorizes the department to screen all applicants for new or renewal licenses and that requires the department to certify the delinquency of the noncustodial parent. The department reports that authority to have access to information on license applicants exists in other sections of law. The certification of delinquency is an activity provided for in s. 61.14, F.S., that is conducted by the clerk when a noncustodial parent is delinquent in payment which the department reports is not performed by DOR as set forth in this section. The amendment would, therefore, eliminate an unnecessary and unused provision. The noticing requirement is also modified in two ways. First, the manner in which the notice to the noncustodial parent is served is changed from mailing the notice certified mail to the use of first class mail. Second, the time allowed to the noncustodial parent to respond is shortened from 30 days from when service of the notice is complete to 30 days from the mailing of the notice.

Incarcerated Noncustodial Parents

The bill articulates the legislative finding that children of incarcerated noncustodial parents are not receiving the child support that would support their basic needs and that addressing the child support issues of noncustodial parents could improve the payment of child support to children upon their release, as well as help develop the familial relationships that potentially reduces recidivism. The Department of Revenue is directed to identify all the inmates in the custody of the Department of Corrections who have child support orders, with the assistance of the

Department of Corrections, by November 1, 2004. The Department of Corrections and Department of Revenue are directed by the bill to jointly develop a data integration plan and a plan of recommendations that will facilitate payment of child support from the Title IV-D obligors who are in the prisons and correctional institutions under the jurisdiction of the Department of Corrections. The plan is to be developed considering the population of incarcerated noncustodial parents in the state, the barriers to noncustodial parents paying their child support, and the strategies that would strengthen their ability to pay their child support obligation upon leaving their incarceration. Minimum components of the plan are outlined in the bill and include certain data information relative to the incarcerated noncustodial parents, the potential for inmates to pay a portion of the child support obligation during incarceration, the methodology for data collection on incarcerated noncustodial parents on an ongoing basis, recommendations for strategies to educate and prepare incarcerated noncustodial parents for their child support obligation, recommendations for strategies to build collaboration between Department of Corrections and Department of Revenue, recommendations for legislative actions that would facilitate payment of the child support, and broader issues that need attention from stakeholders other than the Department of Corrections and Department of Revenue. The Department of Corrections and Department of Revenue are required to submit two reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The first report is due December 31, 2004, and is to present the jointly developed plan and information collected. The second report is due December 31, 2005, and is to present the actions taken to implement the plan, barriers encountered, and any legislative actions identified to address the emerging issues.

The bill takes effect upon becoming law unless stipulated otherwise in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The insurance claim data exchange initiative established by this bill has the potential of collecting additional child support for custodial parents that would not have been previously paid. Evidence of this is the $709,404 collected by the Department of Revenue since July 2002 through the Child Support Lien Network which does not even capture information from a major portion of the insurance carriers in Florida. (Note: This collected amount is the net collection after the Child Support Lien Network's matching fee.) This initiative will also likely result in costs to the insurance carriers to perform the required activities to match data and remit claims to the Department of Revenue.

The Department of Revenue reports that more than 19,000 children in Title IV-D cases will emancipate in 2004. A total of $207 million is owed in past due support by the noncustodial parents of these children. If these noncustodial parents continued to pay at the same rate as prior to the emancipation for a year, the arrearages collected should increase from a projected $4 million to over $44 million.

C. Government Sector Impact:

The Department of Corrections has identified a fiscal impact in this committee substitute if the development of a "data integration plan" is required rather than a "data exchange plan" to implement the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill will modify by statute existing court orders.

VIII. Amendments:

None.

Bill No. CS for CS for SB 160

Amendment No. 1 453758

CHAMBER ACTION

Senate | House

04 APR -8 PM 1:28

SENT TO COMMITTEE
STAFF DIR. STAFF

Senator Dockery moved the following amendment:

Senate Amendment

On page 1, line 30, and page 2, line 1, after "Enforcement"

insert: Application and Program Revenue

Bill No. CS for CS for SB 160

Amendment No. 2 982470

CHAMBER ACTION

Senate House

04 APR -7 PM 4:11

SEN TC: CHAIRMAN
STAFF DIR. STAFF

Senator Dockery moved the following amendment:

Senate Amendment

On page 17, line 2, after "Enforcement"

insert: Collection

Bill No. CS for CS for SB 160

Amendment No. 3 111610

CHAMBER ACTION

Senate House

04 APR -7 PM 4:11

Senator Dockery moved the following amendment:

Senate Amendment

On page 32, line 10, delete "Effective July 1, 2004,"

Bill No. CS for CS for SB 160

Amendment No. 4 164970

CHAMBER ACTION

Senate House

04 APR -7 PM 4:11

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Senator Dockery moved the following amendment:

Senate Amendment

On page 35, line 28, after "Section 18."

insert: Effective July 1, 2004,

Bill No. CS for CS for SB 160

Amendment No. 5 890386

CHAMBER ACTION

Senate House

04 APR 12

Senate

Senator Dockery moved the following amendment:

Senate Amendment

On page 42, line 12, delete "integration"

and insert: exchange

5

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 338

SPONSOR: Senator Constantine

SUBJECT: Brownfield Loan Guarantees

DATE: April 12, 2004 REVISED: 02/17/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	NR	Fav/1 amendment
2.	DeLoach	Hayes	AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill provides that no more than $5 million of the balance of the Nonmandatory Land Reclamation Trust Fund in a fiscal year may be at risk at any time on loan guarantees for the Brownfield Areas Loan Guarantee Program. The loan guarantee program is extended to 2007. The Legislature must review the program by January 1, 2007, and no new loan guarantees may be approved in 2007 until the review by the Legislature has been completed and a determination made as to an appropriate trust fund to serve as a contingency fund on loan guarantees.

This bill substantially amends s. 376.86, F.S.

II. Present Situation:

In 1997, the Legislature created the Brownfields Redevelopment Act[1] to provide incentives for the private sector to redevelop abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

A local government must designate a brownfield area through the passage of a local resolution. The local government must notify the Department of Environmental Protection and attach a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or, alternatively, provide a detailed legal description. A property owner within the proposed designated area may request in writing that his property be removed from the proposed designation.

[1] Sections 376.77-376.85 may be cited as the "Brownfields Redevelopment Act."

Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The act provided that different standards than those in place for new development should be used to the fullest extent to encourage the redevelopment of a brownfield area. State and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance.

In addition, the 1997 Brownfields Redevelopment Act provided for brownfield redevelopment bonus refunds. A bonus refund of $2,500 was available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target business's annual refund claim authorized in s. 288.106(6), F.S., and approved by the director of the Office of Tourism, Trade, and Economic Development (OTTED).

In 1998, the Legislature amended the Brownfields Redevelopment Act to address several glitches that had been identified since the passage of the act and to make certain changes to enhance the usage and success of the program. One such change was the creation of the Brownfield Areas Loan Guarantee Program[2]. The Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund. No more than $5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or as loan loss reserves.[3] Of the $5 million, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period of longer than 5 years.

The limited state loan guarantee applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A lender seeking a limited state guarantee for a loan from the Brownfield Areas Loan Guarantee Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield areas and determined its feasibility in accordance with its standard procedures. A lender may not file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted.

[2] The Brownfield Areas Loan Guarantee Program is codified in s. 376.86, F.S.

[3] In 2003, ch. 2003-399, L.O.F., the Appropriations Implementing Bill, amended this section to provide that for 1 year only, not more than $1.5 million of the balance of the Nonmandatory Land Reclamation Trust Fund would be at risk for the loan guarantees. This is because this trust is rapidly being drawn down due to the cleanups ongoing at the phosphogypsum stacks at Piney Point and Mulberry. This provision expires on July 1, 2004, at which time the statutory provisions revert back to the $5 million reserve amount for loan guarantees.

The provisions relating to the Brownfield Areas Loan Guarantee Program must be reviewed by the Legislature by June 30, 2004, and a determination made related to the need to continue or modify this section relating to the Brownfield Areas Loan Guarantee Program. New loan guarantees may not be approved in 2004 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans made pursuant to this program.

To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. According to OTTED, the loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer is not required to put up as much upfront cash for the project and has more financial flexibility. The loan guarantee holds until permanent financing is acquired or until the project is sold. In this case, the project was sold last fall and the loan guarantees are no longer needed or applicable.

One of the reasons that the loan guarantee program has not been used more frequently is that the loan guarantee program was not well understood and the process for developing in a brownfield area may be cumbersome and time-consuming. The developer for the project that did use the guarantee program has been actively promoting the program to others wishing to develop in a brownfield area. OTTED has indicated that other projects have expressed an interested in using this program but have not yet submitted applications. These projects take a long time to mature and move through the process slowly. According to s. 376.86(8), F.S., no new loan guarantees may be approved in 2004 until this section has been reviewed by the Legislature; therefore, OTTED would not be able to approve an application until after the 2004 legislative session.

Brownfield areas generally exist near distressed and urban neighborhoods. The shopping center that is being built in the Clearwater brownfield area will benefit the surrounding neighborhoods by giving them shopping and retail opportunities that they did not previously have.

III. Effect of Proposed Changes:

This bill amends s. 376.86, F.S., relating to the Brownfields Areas Loan Guarantee Program to provide that no more than $5 million of the balance of the Nonmandatory Land Reclamation Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. Currently, the $5 million restriction is on the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund.

The bill also provides that the provisions of s. 376.86, F.S., pledging portions of the Nonmandatory Land Reclamation Trust Fund as a contingency on loan guarantees, shall be reviewed by the Legislature by January 1, 2007, to determine the ability of that trust fund to continue serving as a contingency fund on loan guarantees. No new loan guarantees may be approved in 2007 until the review by the Legislature has been completed and a determination made as to an appropriate trust fund to serve as a contingency fund on loan guarantees.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As more development occurs in brownfield areas, the use of the loan guarantee provision is expected to increase. This provision allows developers to proceed with their plans in brownfield areas without having to put up as much cash upfront. Distressed neighborhoods benefit by receiving shopping and other retail opportunities in their area that they did not previously have.

C. Government Sector Impact:

The development of brownfield areas benefits local governments by revitalizing urban and other underused areas and providing additional revenues to the local economy. Such developments create jobs and enhance the standard of living in the area of the development.

Currently, brownfield areas loan guarantees come from a set-aside from the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund. This bill provides that the set-aside will be $5 million of the balance of the Nonmandatory Land Reclamation Trust Fund. Recently, the amount in the Nonmandatory Land Reclamation Trust Fund has been declining at a faster rate than was previously expected primarily due to the expensive cleanup efforts of the phosphogypsum stacks at Piney Point and Mulberry. As a result, ch. 2003-399, L.O.F., the appropriations implementing bill, reduced the guarantee amount to $1.5 million for 1 year only until July 1, 2004. This was enough for OTTED to guarantee the pending project, but in the long run the $1.5 amount would not be enough to generate interest in using the program. The viability of using the Nonmandatory Land Reclamation Trust Fund as a guarantee for brownfield loans is questionable, at best. According to the Department of Environmental Protection's Trust Fund Status and Activity Report dated September 2003, the actual unreserved balance in this trust fund on September 30, 2003,

was $13.61 million and the projected balance of the Nonmandatory Land Reclamation Trust Fund on June 30, 2004, will be $2.04 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:
The amendment provides that the Inland Protection Trust Fund will be used for the Brownfield Areas Loan Guarantee Program instead of the Nonmandatory Land Reclamation Trust Fund. Not more than $5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. The loan guarantee program is extended to 2007 and must be reviewed by the Legislature by January 1, 2007. (WITH TITLE AMENDMENT)

Bill No. SB 338

Amendment No. 1 491646

CHAMBER ACTION

Senate House

The Committee on Natural Resources recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsections (3) and (8) of section 376.86, Florida Statutes, as amended by section 56 of chapter 2003-399, Laws of Florida, are amended to read:

376.86 Brownfield Areas Loan Guarantee Program.--

(3) The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the ~~investment of the earnings accrued and collected upon the~~ investment of the balance of funds maintained in the Inland Protection Trust Fund ~~Nonmandatory Land Reclamation Trust Fund~~. The investment must be limited as follows:

(a) Not more than $5 million of the ~~investment earnings earned on the investment of the minimum~~ balance of the Inland Protection Trust Fund ~~Nonmandatory Land Reclamation~~

~~Trust Fund~~ in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. Of that amount, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses which meet the requirements of subsection (4).

(b) Such funds at risk at any time ~~The investment earnings~~ may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

(8) The council shall provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section shall be reviewed by the Legislature by January 1, 2007 ~~October 1, 2003~~, and a determination made related to the need to continue or modify this section. New loan guarantees may not be approved in 2007 ~~2003~~ until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Inland Protection Trust Fund ~~Nonmandatory Land Reclamation Trust Fund~~ to guarantee portions of loans under this section.

Section 2. This act shall take effect July 1, 2004.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to brownfield loan guarantees; amending s. 376.86, F.S.; revising certain

restrictions on investing funds maintained in the Inland Protection Trust Fund; providing a schedule for legislative review of the Brownfield Areas Loan Guarantee Program; providing an effective date.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 562

SPONSOR: Regulated Industries Committee and Senator Bennett

SUBJECT: Electrical & Alarm System Contracts

DATE: April 12, 2004 REVISED: 03/03/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/1 amendment
3.	DeLoach	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

This bill requires that alarm system contractors and electrical contractors engaged in alarm systems contracting, who seek to renew their certificates or registrations, have two hours of false alarm prevention education as part of their continuing education requirements. It requires burglar alarm and fire alarm system agents to have two additional hours of training in false alarm prevention and expands the criminal background check to require processing through the National Crime Information Center and the Federal Bureau of Investigation (FBI). It allows applicants and individual burglar alarm system agents 90 days to complete training and background checks. It requires that licensed electrical or alarm system contractors furnish their burglar alarm system agents with a board approved identification card. The card is valid for two years and may be renewed subject to proof of compliance with continuing education requirements and an updated criminal background check. It provides for a second alarm verification call should the first call to the premises go unanswered.

This bill substantially amends the following sections of the Florida Statutes: 489.517, 489.518, 489.5185, and 489.529.

II. Present Situation:

Continuing Education

Section 489.517, F.S., requires that contractors licensed under parts I and II of ch. 489, F.S., who seek to renew their certificates or registrations, take 14 hours of continuing education during each biennium. The breakdown in hours is seven hours on technical subjects, one hour on workers' compensation, one hour on workplace safety, and one hour on business practices, with the remaining four on electives chosen from board approved courses.

Alarm System Agents
Section 489.518, F.S., regulates Burglar Alarm System agents. It requires that in order for a licensed electrical or alarm system contractor to employ an agent, the person must be 18 years of age and have completed 12 hours of training in alarm system electronics and other related training. Persons who perform only monitoring or sales are not required to complete the training. It further requires that the employer obtain a fingerprint and background check on the agent from the Florida Department of Law Enforcement. It also permits the agent to work and complete the required training for 60 days under the supervision and control of a licensed electrical or burglar alarm contractor pending the results of the background check. The agent is required to carry a photo identification card identifying the agent and name and license of the contractor.

Fire Alarm System Agents
Section 489.5185, F.S., regulates Fire Alarm System agents. It requires that in order for a certified unlimited electrical contractor or licensed fire alarm contractor to employ a fire alarm system agent, the person must be 18 years of age and have successfully completed a minimum of 18 hours of initial training that includes basic fire alarm system technology in addition to related training in National Fire Protection Association codes and standards. It further requires that the employer obtain a fingerprint and background check on the agent from the Florida Department of Law Enforcement. The alarm and fire alarm system agent is required to carry a board-approved photo identification card identifying the agent and name and license of the contractor.

Alarm Verification Calls Required
Section 489.529, F.S., regulates alarm verification calls. All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to the premises generating the alarm signal, prior to alarm monitor personnel contacting law enforcement for alarm dispatch.

According to Ron Walters, co-chairman of Security Industry Alarm Coalition (SIAC), a nonprofit company representing four major alarm associations, alarm customers consist of seventy percent residential customers and thirty percent commercial customers. SIAC reports that it is impossible to establish the number of actual false alarms but, in areas where there is a local ordinance addressing false alarm problems, false alarm dispatches to residential customers is reportedly significantly lower than dispatches to commercial customers. SIAC is presently working to enhance education to emphasize the seriousness of the false alarm problem while addressing safety issues.

III. Effect of Proposed Changes:

Continuing Education
The bill amends s. 489.517(4)(b), F.S., to require that alarm system contractors and electrical contractors engaged in alarm system contracting, who seek to renew their certificates or registrations, have two hours of false alarm prevention education as part of their continuing education requirements. The bill also changes the continuing education hours from 12 to 14 for both the burglar and fire alarm system agents.

According to the Department of Business and Professional Regulation (department), the requirement for certified or registered electrical and alarm contractors to obtain two hours of

continuing education training may help reduce the high incidence of false alarms being experienced by law enforcement personnel. If the training exposes the contractors to the major reasons for false alarms and does in fact reduce the incidence of false alarms, this will allow for law enforcement personnel to respond to actual required assistance calls from the public.

Alarm System Agents
Section 489.518 F.S., is amended to require a burglar alarm system agent to complete at least two hours of false alarm prevention. The bill deletes the salesperson exemption from the 14 hours of continuing education required for agents. It requires that the employer have an additional background check on the agent applying for employment through the National Crime Information Center and the FBI. It requires that the agent, who is subject to the background check, file a complete set of fingerprints with the Department of Law Enforcement and the FBI. It requires an updated background check from the Florida Department of Law Enforcement for each agent who renews certification. It expands the period the agent may work and complete the required training from 60 days to 90 days pending the results of the background check. It also provides for the board to approve a format for an identification card. The card is valid for two years and may be renewed subject to proof of compliance with continuing education requirements and an updated criminal background check.

According to the department, the effect of salespersons being required to complete the training for burglar alarm system agents may provide a number of benefits to the public and the industry. A salesperson, with the knowledge and training in alarm systems, will be better versed in dealing with the public when presenting a system. The department further maintains that the training should aid the agent in developing a system within the customer's desires instead of selling a generic system that may or may not meet the customer's particular situation.

The department points out that another benefit that may bring "peace of mind" to the customer will be the fact that an agent who has entered their private residence to do a survey for an alarm system has been screened and cleared through a more expansive background check. The background check through the National Crime Information Center provides a criminal history check outside of state boundaries.

The condition which allows the agent to work for 90 days and obtain a board approved identification card will mirror the same condition currently allowed for fire alarm system agents. Requiring the agent to have an updated background check from the Florida Department of Law Enforcement will "refresh" the background information. This will determine that no illegal activity has occurred after initial and continued employment of the burglar alarm agent.

Fire Alarm System Agents
Section 489.5185, F.S., is amended to require two hours of training in false alarm prevention which is included in the initial 14 hour training. It requires that the employer have an additional background check on the agent applying for employment through the National Crime Information Center and the FBI. It requires that the agent, who is the subject of the background check, file a complete set of fingerprints with the Department of Law Enforcement and the FBI. It also requires an updated background check from the Florida Department of Law Enforcement for each agent who renews certification.

According to the department, the requirement for fire alarm system agents to obtain two hours of training in false alarm prevention in the initial 14 hour training may aid the agent in better determining if an activated alarm is a genuine emergency or a fault of the system. Being better educated in the area, the agent's training may also aid in reducing the number of false alarms thus reducing the number of available law enforcement personnel for genuine emergencies. The new requirement for an additional background check through the National Crime Information Center will also, as in the case of the burglar agents, provide for a background check outside of state boundaries. This may help identify any criminal behavior that may preclude the individual from working as an alarm system agent. The effect of performing an updated background check in detecting any criminal behavior through the Florida Department of Law Enforcement for agents that renew their license, may aid in detecting any criminal behavior that may have occurred between initial and continued employment.

Alarm Verification Calls Required
The bill requires for the central monitoring station for residential or commercial intrusion/burglary alarms to make a second call to the premises generating the alarm signal if the first call is not answered.

According to the department, once an alarm has been activated, the effect of allowing for the central monitoring station to place a second call to the premises if a first call is not answered may require more critical thought. There could be a situation in a true emergency where the individual requiring assistance cannot respond. The few seconds it takes to make a second call to verify an alarm activation may mean the difference between an individual receiving timely assistance or not. The current language in the bill states that a second call should be made which makes it unclear whether it is within the discretion of the central monitoring station to make a second call or to dispatch law enforcement after a first call is made.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certified electrical contractors or licensed fire alarm contractors will incur an additional cost of $32.00 for the additional background checks of their employee applicants through the FBI. It is also estimated that the alarm system agent and the fire alarm system employee applicants might incur additional minimal costs for obtaining their fingerprints.

C. Government Sector Impact:

The department states that the bill will increase regulation of alarm system agents by requiring additional background checks and specific continuing education requirements for all licensees; however, the extent of the additional regulation is minimal. The department also states that the bill, as it relates to the department's purpose of protecting health, safety, and welfare through its regulatory structure, may be linked to its long – range program plan and budget.

If the requirement for additional training and provision for a second verification call result in fewer false alarms, local law enforcement agency and fire department costs will be reduced by the reduction in the number of alarms.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:
The amendment deletes a requirement in the bill that a burglar alarm system agent or a fire alarm system agent cannot be employed without having a criminal background check through the National Crime Information Center.

Bill No. CS for SB 562

Amendment No. 1 440640

CHAMBER ACTION

Senate House

The Committee on Criminal Justice recommended the following amendment:

Senate Amendment

On page 3, lines 22 and 23, and page 8, lines 7 and 8, delete those lines

and insert: check. Each individual subject to the background

Bill No. CS for SB 562

Amendment No. 1 910372

CHAMBER ACTION

Senate | House

04 APR 12 AM 8:20

SENT TO CHAIRMAN
STAFF DIR. STAFF

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 3, lines 20-30, delete those lines

and insert: Florida Department of Law Enforcement a completed fingerprint and criminal background check for each applicant for employment as a burglar alarm system agent or for each individual currently employed on the effective date of this act as a burglar alarm system agent.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 8 and 9, delete those lines

and insert:

removing an exemption from training

Bill No. CS for SB 562

Amendment No. 2 245228

CHAMBER ACTION

Senate House

04 APR 12 AM 8:19

SENT TO CHAIRMAN
STAFF DIR. STAFF

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 8, lines 5-15, delete those lines

and insert: the Department of Law Enforcement a completed fingerprint and criminal background check for each applicant for employment as a fire alarm system agent or for each individual currently employed on the effective date of this act as a fire alarm system agent.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 24 and 25, delete those lines

and insert:

requiring an updated criminal background

Bill No. CS for SB 562

Amendment No. 3

412424

CHAMBER ACTION

Senate | House

Senator Atwater moved the following amendment:

Senate Amendment

On page 11, line 23, through page 12, line 4, delete those lines

(Redesignate subsequent sections.)

7

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1712

SPONSOR: Agriculture Committee, Senators Argenziano, Jones, Smith, and others

SUBJECT: Agricultural Economic Development

DATE: April 12, 2004 REVISED: 03/12/2004 03/16/2004

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Fav/CS
2.	Molloy	Kiger	NR	Fav/4 amendments
3.			RI	Withdrawn
4.	Blizzard	Hayes	AGG	
5.			AP	
6.				

I. Summary:

This bill gives the agricultural landowner, whose land has been rezoned or the residential density lowered resulting in an inordinate burden, an immediate cause of action under s. 70.001, F.S. (the Bert J. Harris Private Property Rights Protection Act, hereafter referred to as the Bert Harris Act) with the time period between the filing of a claim and the filing of an action being reduced to 60 days from 180 days. It establishes an "agricultural enclave" designation and provides that owners of such land may apply to amend the local government comprehensive plan and such application will be deemed to be "in compliance" with the requirements set forth for adoption of a comprehensive plan in s. 163.3184, F.S., if it includes uses consistent with the surrounding industrial, commercial, and residential uses. The bill requires that the lease on land subject to an agricultural lease be continued for the term of the lease up to one year if that land is purchased by a state entity for conservation or recreation purposes. It also requires that reasonable efforts be made to continue the lands in agriculture production and that the acquiring agency consider any agriculture lease in the development of its management plan. The bill requires regional water supply plans to consider limitations on alternative sources of water to self-suppliers. It requires a Water Management District (WMD) to inform an applicant for renewal of a permit for agricultural water use about the availability of 20-year permits. The bill requires the Department of Agriculture and Consumer Services (DACS) and a WMD to enter into a Memorandum of Agreement regarding the processing of exemptions for agriculture water usage.

This bill substantially amends ss. 163.2514, 163.2517, 373.0361, and 373.236, Florida Statutes, and creates sections 70.005, 259.047, and 373.407, Florida Statutes.

II. Present Situation:

Section 70.001, F.S., sets forth the Bert Harris Act which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable, investment-backed expectation for the property. A 180 day time period is required between the filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The Act contains a special designation and specific provisions relating to an urban infill and redevelopment area but there is no designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

Chapter 259, F.S.
Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation", and contains Florida's nationally recognized land acquisition programs: The Conservation and Recreation Lands program (CARL), the Preservation 2000 program (P2000) and the Florida Forever program.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands, and to conserve and protect environmentally unique and irreplaceable lands, and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever programs. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands, but is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvement Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of $300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the DACS received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than $3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agriculture lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

Consumptive Use Permits (CUPs)
Water use permits can be issued to non-government individuals or entities for a period up to 20 years but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. Section 373.406 (2), F.S., contains an exemption from the requirements for managing and storing surface waters which permits agriculture users to alter the topography of their land. Presently, there is no requirement that this exemption be the subject of an agreement between DACS and the respective WMD.

Regional Water Supply Planning
In 1997, the Legislature enacted ch. 97-160, Laws of Florida, and directed that water management districts initiate water supply planning for each water supply planning region identified in a district water management plan where the district determines that sources of water are not adequate to supply water for existing and projected reasonable-beneficial uses. These regional water supply plans are to include water supply development and water resource development components, recovery and prevention strategies, and funding strategies.
Water supply development components must identify the amount of water needed for existing and future uses with a level of certainty based on needs for a 1-in-10-year drought event, a list of water source options, the estimated amount of water available, and the costs of and potential source for those options.

The DEP must submit an annual report on the status of regional water supply planning to the Governor and the Legislature, and each regional water supply plan must be reviewed every five years. The Northwest Florida, Southwest Florida, St. Johns River and South Florida water management districts have completed regional water supply plans, and the first update of these plans is scheduled for this year.

III. Effect of Proposed Changes:

Section 1. Creates s. 70.005, F.S., to provide that the landowner whose agricultural land has suffered an inordinate burden due to a change in classification or zoning or the lowering of the residential density designation has an immediate cause of action. Reduces from 180 days to 60 days the notice period required by s. 70.001, F.S., before filing an action.

Section 2. Amends s. 163.2514, F.S., Growth Policy Act definitions, to define "agricultural enclave" as an undeveloped area utilized for agricultural purposes and surrounded on at least 80 percent of its perimeter by existing or approved industrial, commercial, or residential development with available public services.

Section 3. Amends s. 163.2517, F.S., to provide that the owner or owners of an agricultural enclave may apply for an amendment to the local government comprehensive plan which may include uses and intensities consistent with the surrounding industrial, commercial, or residential area. Provides that such an amendment to a local comprehensive plan shall be deemed to prevent urban sprawl and meet the compliance requirement contained in s. 163.3184, F.S., even if it is inconsistent with other local, state, or regional planning ordinances, or the Florida Administrative Code.

Section 4. Creates s. 259.047, F.S., relating to the acquisition of lands with existing agriculture leases, to require that when lands with existing agricultural leases are purchased, the state shall allow any existing agricultural lease to remain in force for the lease term up to one year from the date of purchase. Provides that where consistent with the purpose for which the lands were purchased, a purchasing entity must make reasonable efforts to keep lands in agricultural production. Provides that managing entities must consider any existing agriculture lease in the development of the agency's management plan.

Section 5. Amends s. 373.0361, F.S., relating to regional water supply planning, to provide recognition that water source options for self-suppliers to choose from in developing alternative sources of water are limited.

Section 6. Amends s. 373.236, F.S., relating to the duration of consumptive use permits, to require that a water management district must inform an agricultural consumptive use permit applicant of the option to request a 20-year permit.

Section 7. Creates s. 373.407, F.S., relating to a memorandum of agreement for an agricultural related exemption, to require that DACS and each WMD enter into a Memorandum of Agreement (MOA) by July 1, 2005 in which DACS will assist in determining whether an activity qualifies for an agricultural related exemption set forth in s. 373.406(2)., F.S. The MOA must include:

- a process whereby DACS, at the request of a district, shall conduct a nonbinding review.
- processes and procedures to be followed by DACS in its review and issuance of a determination.

Section 8. Provides that this act shall take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

On March 16, 2004, the Senate Natural Resources Committee adopted the following four amendments to the CS/SB 1712:

Amendment #1 (Barcode #952474) - Redefines "agricultural enclave" to mean any unincorporated, undeveloped area utilized for bonafide agricultural purposes continuously for a period of 5 years.

Amendment #2 (Barcode #865688) - Clarifying amendment to provide that agricultural enclave amendments must otherwise comply with provisions governing amendments to local comprehensive plans.

Amendment #3 (Barcode #704992) - Clarifies that agricultural leases on lands being purchased by the state or another entity under the Florida Forever Program can continue until the end of the lease term.

Amendment #4 (Barcode #202746) - Provides that population projects used to determine public water supply needs must be based on the best available data using the University of Florida's Bureau of Economic and Business Research medium population projections. Provides for recognition that alternative water supply development options for agricultural self-suppliers are limited.

Bill No. CS for SB 1712

Amendment No. 1 131334

CHAMBER ACTION

Senate	House
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The Committee on Natural Resources recommended the following amendment:

Senate Amendment

On page 2, lines 25-26, delete those lines

and insert:

(1) "Agricultural enclave" means any unincorporated, undeveloped area utilized for bonafide agricultural purposes continuously for a period of 5 years as defined by s. 193.461 and surrounded on at least

Bill No. CS for SB 1712

Amendment No. 2 634680

CHAMBER ACTION

Senate House

The Committee on Natural Resources recommended the following amendment:

Senate Amendment

On page 3, line 19, after the word "is"

insert:

otherwise

Bill No. CS for SB 1712

Amendment No. 3 842030

CHAMBER ACTION

Senate House

. . . . . .

The Committee on Natural Resources recommended the following amendment:

Senate Amendment

On page 3, line 27, thru page 4, line 6, delete those lines

and insert: 259.047 Acquisition of lands where an agricultural lease exists.

(1) When land with an existing agricultural lease is acquired in fee simple pursuant to this chapter or chapter 375, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under the provisions of s. 253.034.

(2) Where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Bill No. CS for SB 1712

Amendment No. 4 344726

CHAMBER ACTION

Senate | House

The Committee on Natural Resources recommended the following amendment:

Senate Amendment (with title amendment)

On page 4, lines 15-28, delete those lines

and insert:

1. A quantification of the water supply needs for all existing and reasonably projected future uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local

government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

2. A list of water source options ~~for water supply development~~, including traditional and alternative source options ~~sources~~, from which local government, government-owned and privately owned utilities, self-suppliers, and others may choose, for water supply development, the total capacity of which will, in conjunction with water conservation and other demand management measures, exceed the needs identified in subparagraph 1. The list of water source options for water supply development must contain provisions that recognize that alternative water source options for agricultural self-suppliers are limited.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 14-15, delete those lines

and insert:

providing for a public workshop on the development of regional water supply plans that include the consideration of population projections; providing for a list of water source options in regional water supply plans; providing for recognition that alternative water source options for agricultural self-suppliers are limited;

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2822

SPONSOR: Senator Argenziano

SUBJECT: Private Investigative Services

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Fav/CS
2.	Keating	Johansen	FT	Favorable
3.	Blizzard SB	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

This bill raises the age limit for certain private investigator licenses. It specifies that a security agency must have commercial general liability insurance and failure to do so will constitute grounds for disciplinary action. Continuing education is instituted as a condition of renewing a security agent's license. Education, experience, training, and examination standards are set as a prerequisite to obtaining certain private investigator licenses effective July 1, 2004 and fees are established for the examination. The type of education and the examination criteria is to be determined by the Department of Agriculture and Consumer Services (department). The department is to use competitive bidding to develop and conduct the continuing education classes.

This bill substantially amends, the following sections of the Florida Statutes: 493.6106, 493.6110, 493.6113, 493.6118, 493.6202, and 493.6203.

II. Present Situation:

A person need only be 18 years of age to obtain a private investigative, security, or recovery license. All licensed agencies must provide proof of comprehensive general liability insurance with the type of coverages outlined in the statute. There is no continuing education requirement for applicants renewing a private security license and there are no experience requirements. An applicant for a Class "C" (Private Investigator) license must meet certain experience requirements but does not have to take an examination. Likewise, an applicant for a Class "CC" (Private Investigator Intern) license must serve an internship but does not have to pass an examination or complete any specific training.

III. Effect of Proposed Changes:

Section 1. Amends s. 493.6106(1)(a), F.S., to raise the age limit from 18 to 21 for individuals seeking Class "C," (Private Investigator) Class "MA," (Manager of a Private Investigative agency) or Class "M" (Manager of a dual Private Investigative and Security agency) licenses.

Section 2. Amends s. 493.6110, F.S., to specify that the type of insurance coverage shall be commercial general liability and it shall be required only of a Class "B" (Private Security Agency) agency.

Section 3. Amends s. 493.6113, F.S., regarding license renewal procedures as follows:

- Class "B" (Private Security) agencies have to provide evidence of the required insurance coverage.
- Requires 6 hours of continuing education every two years.
- Requires the department to set criteria for courses and to use competitive bidding to develop and conduct continuing education classes.
- Provides that training can be conducted at various locations and sets forth guidelines for the issuance of a certificate of completion.

Section 4. Amends s. 493.6118, F.S., to make the failure to maintain adequate commercial general liability insurance grounds for disciplinary action for a licensee.

Section 5. Amends s. 493.6202 to establish a fee of $100 for the examination of a private investigator or an intern.

Section 6. Amends s. 493.6203 to revise the licensing requirements as follows:

- Clarifies that an applicant for a Class "MA" (Manager of a Private Investigative agency) license shall have at least 2 years experience of which not more than one year can be satisfied by college coursework or law enforcement training.
- Beginning July 1, 2004, an applicant for a Class "C" (Private Investigator) license, in addition to meeting certain experience criteria, must pass an examination. This does not apply to a person holding a license on July 1, 2004, unless that license has been invalid for more than 1 year.
- Beginning July 1, 2004, an applicant for a Class "CC" (Private Investigator Intern) license must have completed 40 hours of training within the prior 12 month period which is evidenced by a certificate of completion. The applicant must also pass an examination. In addition, this requirement applies to any person whose Class "CC" license has been invalid for more than 1 year. The course content and examination criteria shall be determined by the department.

Section 7. Provides that this act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill imposes a fee of $100 for the examination of a private investigator or a private investigator intern. The department estimates the following examination fee revenues:

Division of Licensing TF	FY 2004-05	FY 2005-06
Private Investigator Exams	$ 46,900	$ 93,800
Private Investigator Intern Exams	--	70,917
Total	**$ 46,900**	**$164,717**

B. Private Sector Impact:

Persons wanting to be licensed as a private investigator or private investigator intern will incur costs for examinations, training, and continuing education.

C. Government Sector Impact:

It is estimated that any revenue realized by the department from the examinations of private investigators and interns would be offset by the costs of administering those examinations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2026

SPONSOR: Governmental Oversight & Productivity Committee, Regulated Industries Committee, and Senator Pruitt

SUBJECT: Professions Regulation/DBPR

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.	DeLoach	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

The committee substitute for CS/SB 2026 substantially rewords the provisions of the Management Privatization Act in s. 455.32, F.S., to establish a model for the privatization of the regulation of professionals when requested by any board of the Department of Business and Professional Regulation (DBPR or department). The bill defines "board" to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. The bill defines corporation to mean any nonprofit corporation.

The bill defines the terms "performance standards and measurable outcomes," "department," "executive director," and "secretary." The bill requires that a board's privatization request must contain a needs assessment and financial feasibility study.

The bill amends the provisions of the Management Privatization Act to provide that a corporation providing support services to a board must:

- Be a Florida corporation not for profit.
- Operate under a fiscal year July 1 through June 30.
- Have a five member board of directors whose members may be removed by the Governor for the same reasons that a member of a regulatory board may be removed. Three of the directors are appointed by the regulatory board and two by the department. No professional board member may also serve on the board of directors for the corporation.
- Have its articles of incorporation and bylaws approved by the department.
- Operate under a written contract with the department.
- Provide a faithful performance bond for all persons charged with receiving and depositing fee and fine revenue.

- Keep financial and statistical information.
- Be the sole source and depository for the board's records, which must be maintained in accordance with the guidelines of the Department of State.
- Provide by rule for the security and monitoring of licensure examinations.
- Maintain the current act's reporting requirements.
- Require methods and mechanisms to resolve any noncompliance of the contract.
- Return to the department all records, monies, properties held in trust, and data in the event the corporation is no longer approved to operate.
- Secure and maintain liability insurance coverages.
- Assume all insurance deductibles, all costs of representation, all costs related to the prosecution of cases, all costs for board counsel, and all direct and indirect costs related to the monitoring of the contract. The board in lieu of the department must retain the board counsel.

The bill provides that the corporation's staff are not public employees for the purposes of ch. 110 or ch. 112, F.S., except that the provisions of s. 112.061 F.S., and part III of ch. 112, F.S., do apply. It authorizes the corporation to select a president of the management corporation.

The bill requires a financial model and business case for the corporation with projected costs for the first two years. The business case must be approved by the Governor. It provides that the corporation may use interest derived by it to offset the costs associated with the use of credit cards.

The bill authorizes the corporation to initiate disciplinary investigations, and authorizes the department to delegate to the corporation the authority to issue emergency suspension or restriction orders.

The bill deletes the DBPR's authority to privatize continuing education monitoring, and establishes limits for fines that may be imposed for violations by licensees and providers. The bill provides for the approval of continuing education courses by the DBPR.

This bill would take effect on July 1, 2004.

This bill substantially amends the following sections of the Florida Statutes: 455.32, 455.2177, 455.2178, 455.2179, and 455.2281.

II. Present Situation:

Present Situation

The Department of Business and Professional Regulation (DBPR or department) is created in s. 20.165, F.S. The DBPR has ten divisions.[1] Pursuant to s. 455.221, F.S., the DBPR is required to provide its boards[2] with investigative and legal services necessary to regulate licensees. The sole authority to prosecute the unlicensed practice of professions is granted to the department by s. 455.228, F.S., which provides that the department may:

- issue notices to cease and desist;
- impose administrative penalties;
- issue citations; and
- seek enforcement of its actions and imposition of civil penalties in circuit court.

Funding to deter unlicensed activity is provided by s. 455.2281, F.S., through the imposition of a $5 fee upon each license and license renewal. The $5 fee is collected in addition to all other licensure fees collected.

Management Privatization Act

In 2000, the Legislature created s. 455.32, F.S., the Management Privatization Act (the "act"),[3] which authorizes the DBPR to contract with a corporation or business entity to perform administrative, investigative, licensing, examination, and prosecutorial support services, upon the request of any board, commission, or council within the DBPR. A contract for such support services must be in compliance with the act and other applicable laws and must be approved by the board before the DBPR enters into the contract. The DBPR retains responsibility for any duties it currently exercises relating to its police powers and any other current duty that is not provided to the corporation by the contract.

Among the minimum contractual requirements established in s. 455.32(3), F.S., are those that direct the corporation to:

- provide administrative, investigative, examination, licensing, and prosecutorial support services;
- utilize computer technology compatible with the DBPR;

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[1] Section 20.165, F.S., creates the following divisions in the DBPR: (1) Administration; (2) Alcoholic Beverages and Tobacco; (3) Certified Public Accounting; (4) Florida Land Sales, Condominiums, and Mobile Homes; (5) Hotels and Restaurants; (6) Pari-mutuel Wagering; (7) Professions; (8) Real Estate; (9) Regulation; and (10) Technology, Licensure, and Testing.

[2] Section 455.01(1), F.S., defines "board to mean:

> ...any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

[3] Chapter 2000-356, s. 9 L.O.F.

- submit an annual budget to the board and the DBPR;
- keep financial and statistical information as necessary to completely disclose the financial condition and operation of the projects as requested by the Office Of Program Policy Analysis And Government Accountability (OPPAGA), the Auditor General, and the DBPR;
- provide for methods and mechanisms to resolve noncompliance with certification requirements under s. 455.32(10), F.S;[4]
- provide an annual report to the DBPR and the board describing all activities for the previous fiscal year;[5] and
- provide for an annual audit of its financial accounts and records.[6]

Under s. 455.32(4), F.S., sovereign immunity applies to the corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11), F.S.

Funding for the corporation, under s. 455.32(5), F.S., shall be through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

Section 455.32(6) provides that if the corporation is no longer approved to operate for the board or the board ceases to exist, moneys and property held in trust by the corporation for the benefit of the board shall revert to the board, or to the state if the board ceases to exist.

Section 455.32(7), F.S., provides for an executive director who is to supervise the activities of the corporation to ensure compliance with the contract and provisions of the act. The executive director of the board, who is appointed by the DBPR, is an employee of the DBPR and serves as a liaison between the DBPR, the board and the corporation. The executive director is also required to ensure that the police powers of the DBPR are not exercised by the corporation.

Moreover, s. 455.32(8), F.S., expressly forbids the corporation from exercising any authority assigned to the department or board under the act or the practice act of the relevant profession, including determining legal sufficiency and probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under ch. 120, F.S.

Under s. 455.32(9), F.S., this annual audit report must include a management letter in accordance with s. 11.45, F.S., which defines a management letter as a statement of the auditor's comments

[4] *See also* the annual certification requirement in s. 455.32(10), F.S.
[5] Section 455.32(3)(f), F.S., requires the report to include: (1) Any audit performed under subsection (9), including financial reports and performance audits; (2) The number of license applications received, the number of licenses approved and denied, the number of licenses issued, and the average time required to issue a license; (3) The number of examinations administered and the number of applicants who passed or failed the examination; (4) The number of complaints received, the number of complaints determined to be legally sufficient, the number of complaints dismissed, and the number of complaints determined to have probable cause; (5) The number of administrative complaints issued and the status of the complaints; (6) The number and nature of disciplinary actions taken by the board; (7) All revenue received and all expenses incurred by the corporation over the previous 12 months in its performance of the duties under the contract; and (8) The status of the compliance of the corporation with all performance-based program measures adopted by the board.
[6] *See also* the annual financial audit requirement in s. 455.32(9), F.S.

and recommendations, and a detailed supplemental schedule of expenditures for each expenditure category. This report must be submitted to the board, the DBPR, and the Auditor General for review.

Section 455.32(10), F.S., requires the board and the department to annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state.

Section 455.32(13), F.S., however, required the DBPR to enter a contract with a corporation or business entity to provide investigative, legal, prosecutorial, and other services on behalf of the Board of Architecture and Interior Design by no later than October 1, 2000. The Board of Architecture and Interior Design, which is created under Part I of ch. 481, F.S., is one of the boards established in the Division of Professions (the "division"). The DBPR licenses architects and interior designers under s. 481.213, F.S. The Board of Architecture and Interior Design negotiated a contract for privatization with a vendor, but the board and the DBPR could not come to terms. According to DBPR officials, the department wanted to maintain oversight of the private vendor's budget, while the board wanted to maintain full budget control over the vendor.[7] Section 481.205(3)(b), F.S., delegates to the board, in lieu of the department, the authority to contract with a corporation or other business entity to provide investigative, legal, prosecutorial, and other services necessary to perform its duties. With this authority, the Board of Architecture and Interior Design contracted with a vendor to perform investigation and prosecutions. The vendor also has final order authority over unlicensed activities.

Under s. 455.32(14), F.S., DBPR retains the independent authority to open, investigate, or prosecute any cases or complaints, as necessary, to protect the public health, safety, or welfare. In addition, DBPR retains sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 and to prosecute unlicensed activity cases pursuant to ss. 455.228 and 455.2281, F.S.

Section 455.32(15), F.S., provides that the corporation's records are public records subject to the provisions of the public records law in s. 119.07(1), F.S., and s. 24(a), art. I, Fla. Const.

Section 455.32(16), F.S., addresses the consequences if any of the provisions of s. 455.32, F.S., are held unconstitutional or violative of state or federal antitrust laws. The principal consequence is that the corporation must cease and desist from exercising the enumerated powers and duties and the department must resume the performance of such activities.

Section 455.32(17), F.S., provides that s. 455.32, F.S., is repealed on October 1, 2005, and must be reviewed prior to that date for the purpose of determining its continued existence.

[7] See Office of Program Policy Analysis and Government Accountability (OPPAGA), *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report No. 02-38, June 2002.

Board of Professional Engineers

Section 471.007, F.S., creates the Board of Professional Engineers, which regulates the engineering profession. The Florida Engineers Management Corporation Act (FEMCA), s. 471.038, F.S., creates the Florida Engineers Management Corporation (corporation) to provide administrative, investigative, and prosecutorial services to the Board of Professional Engineers in accordance with the provisions of chs. 455 and 471, F.S. this is the only professional board under the DBPR that has been privatized its support services.

The FEMCA provides for the staffing of the corporation, and specifies in detail its powers and duties. [8] The corporation may not exercise any authority specifically assigned to the board under the mentioned chapters, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules.[9]

The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation must maintain those records in accordance with the guidelines of the Department of State and must not destroy any records prior to the limits imposed by the Department of State.[10] The corporation's records are public records, and all meetings of the board of directors of the corporation must be open to the public.[11]

The board is required to provide by rule procedures for the corporation to insure that all the corporation's licensure examinations are secure and that there is an appropriate level of monitoring during licensure examinations.[12]

Section 471.0385, F.S., provides that if any provision of the FEMCA is held to be unconstitutional or is held to violate Florida or federal antitrust laws, the corporation must cease and desist from exercising any powers and duties, and the DBPR must resume the performance of such activities.

Professional Board Privatization Background

In its 1999 review of the Florida Engineers Management Corporation, OPPAGA made the following findings and recommendations:

- Because privatizing an individual board may increase costs for the remaining boards, the department should conduct an analysis of the costs and benefits of privatization.
- The department should establish performance-based contracts with the privatized entities.

[8] Section 471.038(3), F.S.
[9] Section 471.038(4), F.S. DBPR retains the independent authority to open, investigate, or prosecute any cases or complaints necessary to protect the public health, safety, or welfare. Pursuant to ss. 471.038(5) and (6), F.S., DBPR also retains the power to issue emergency suspension order and prosecute unlicensed activity complaints.
[10] Section 471.038(7), F.S. However, the corporation maintains any public records exceptions set forth in ss. 455.217 and 455.229, F.S.
[11] Section 471.038(8), F.S.
[12] Section 471.038(9), F.S.

- The department should consider increasing the specialization of the board's staff to increase the corporation's performance.[13]

A study of privatization by the Governor's Chief Inspector General made the following recommendations:

- monitor outsourcing practices for inadequacies and inconsistencies;
- establish a statewide training initiative;
- create a uniform vendor monitoring and rating system; and
- develop procedures for agencies to perform and document privatization needs assessments.

The report further recommended that the Department of Management Services, with the support of other state agencies' procurement staff, should propose legislative changes meant to strengthen agency contracting processes.[14]

In its recent review of privatization efforts, OPPAGA concurred in these recommendations and made the following additional recommendations for legislative action:

- mandate the use of "business cases," which is a structured analysis that aides in decision making for policy makers, for privatization proposals;
- strengthen the requirements for performance contracting; and
- strengthen the oversight of agency privatization initiatives.[15]

Monitoring Compliance with Continuing Education Requirements

Section 455.2177, F.S., requires the DBPR to establish a system to monitor licensee compliance with the applicable continuing education requirements and to determine each licensee's status. This provision allows the DBPR to phase in the monitoring system, but requires that the DBPR must establish this system for all professions regulated by the department no later than July 1, 2002.

The compliance monitoring system may be privatized, and s. 455.2177(2), F.S., provides detailed requirements governing private providers of continuing education monitoring.

Section 455.2177(3), F.S., limits the sanctions that can be imposed for the failure of a licensee to meet continuing education requirements to the sanctions in s. 455..2177(2)(b), F.S., which sets a $500 administrative fine for failure to comply with continuing education requirements. However, the department may reduce the fine to $250 if the licensee satisfies the requirement within 90 days of the imposition of the original fine. This provision applies whether the monitoring system is privatized or not.

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[13] *See* OPPAGA, *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report No. 02-38, June 2002; and *Performance Review: Privatizing Regulation of Professional Engineers Has Improved Services, But Increased costs*, Report No. 99-42, 2000.

[14] Executive Office of the Governor's Chief Inspector General, *Road Map to Excellence in Contracting*, Report No. 2003-3, June 2003.

[15] OPPAGA, *The Legislature Could Strengthen State's Privative Accountability Requirements*, Report No. 04-02, January 2004.

Section 455.2177(4), F.S., requires that the department waive the continuing education monitoring requirements for any profession that demonstrates that it has a program in place that measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95% of its licensees are in compliance.

Continuing Education Providers

Section 455.2178, F.S., requires that the DBPR notify each approved continuing education provider of the name and address of all vendors that monitor compliance under s. 455.2177, F.S. If there is more than one vendor, the notice must specify the profession to be monitored by each vendor. Continuing education providers must also provide to the vendors information about the continuing education status of licensees. No later than five business days after a licensee's completion of a course, the provider must electronically submit to the vendor that information. Section 455.2178(6), F.S., authorizes the DBPR to adopt rules to implement this section.

Section 455.2179, F.S., requires each board, or the department if there is no board, to approve providers of continuing education. An approval may not exceed four years. However, s. 455.2179(1), F.S., provides that an approval that does not include such a time limitation may remain in effect until July 1, 2001, unless earlier replaced by an approval that includes such a time limitation. This provision does not provide for department approval of continuing education courses.

Unlicensed Activities Fee

Section 455.2281, F.S., establishes a $5 fee per license to fund efforts to combat unlicensed activity. This fee is applied at initial licensure and at each renewal. The DBPR is required to directly credit to each profession revenues received from the department's efforts to enforce licensure provisions. Section 455.2281, F.S., also requires that all fines collected under s. 455.2177, F.S., must be directly credited to each profession.

III. Effect of Proposed Changes:

Section 1. The bill substantially rewords the provisions of s. 455.32, F.S., to establish a model for the privatization of the regulation of professionals. The bill provides that, at the request of any board, a nonprofit corporation may be established *by the department* to provide administrative, investigative, and prosecutorial services to any board created with the DBPR.

The bill defines "board" to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. this definition is broader than the definition for board in s. 455.01(1), F.S.[16] The bill defines corporation to mean any nonprofit corporation that the department contract with the corporation in accordance with s. 455.32(14), F.S.[17]

[16] *See supra* note 1 for definition of "board" under s. 455.011(1); s. 20.03(7), F.S., defines "council" or "advisory council" to mean ". . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives"; s. 20.03(10), F.S., defines "commission" to mean ". . . unless otherwise required by the State Constitution, ... a body created by specific statutory enactment within a department, the office of the Governor, or the

The bill defines the term "business case" to mean a needs assessment, financial feasibility study, and corporate financial model and specified in s. 455.32(4), F.S. The bill defines the term "performance standards and measurable outcomes" to include, but not be limited to, timeliness and quantitative criteria for activities specified in s. 455.32(6)(o), F.S. The bill also defines the terms "department," "contract manager," and "secretary."

The bill makes the following substantive changes to s. 455.32, F.S.:

- It requires that a board's privatization request must contain a business case that includes needs assessment and financial feasibility study with specific performance standards and measurable outcomes. The feasibility study must evaluate the department's current and projected performance standards in regard to those standards. The financial model must include projected costs and expenses for the first two years of operation and specific performance standards and measurable outcomes. The business case must be approved by the Executive Office of the Governor and the Legislative Budget Commission.[18]

- The corporation's staff are not public employees for the purposes of ch. 110 or ch. 112, F.S., which relate state employment and public officers, respectively. However, it provides that the provisions of s. 112.061 F.S., which relates to the per diem and travel expenses of public officers, employees, and authorized persons, and part III of ch. 112, F.S., which establishes a code of ethics for public officers and employees, do apply to the corporation's staff.[19]

- The corporation must be a Florida corporation not for profit incorporated under ch. 617, F.S.[20]

- The corporation must operate under a fiscal year that begins on July 1, of each year and ends on June 30 of the following year.[21]

- The corporation must have a five member board of directors. Three of the directors would be appointed by the board and are licensees regulated by that board. Two of the directors are appointed by the secretary and must be laypersons not regulated by that board. The bill provides for staggered terms for the corporation's directors, establishes a two consecutive terms limitation, and provides that failure to attend three consecutive

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Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor"; s. 20.03(12), F.S., defines "board of trustees" to mean ". . . except with reference to the board created in chapter 253, means a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program."

[17] Section 455.32(3)(b), F.S.

[18] Section 455.32(4), F.S.

[19] Section 455.32(5), F.S.

[20] Section 455.32(6)(a), F.S.

[21] Section 455.32(6)(e), F.S.

meeting shall be deemed a resignation from the board. No professional board member may serve on the board of directors.[22]

- The corporation's officers must be selected in accordance with its bylaws.[23]
- The department must approve the corporation's articles of incorporation and bylaws.[24]
- The Governor may remove a member of the board of directors for the same reasons that a member of a regulatory board may be removed pursuant to s. 455.209, F.S.[25]
- The corporation may select a president of the management corporation to manage the operations of the corporation.[26] The bill does not define the term "management corporation."
- The corporation may use interest derived by it to offset the costs associated with the use of credit cards to pay fees.[27]
- The corporation must operate under a written contract with the department.[28]
- The corporation must provide a faithful performance bond for all employees and nonemployees charged with receiving and depositing fee and fine revenue.[29]
- The corporation must keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation.[30]
- The corporation would be the sole source and depository for the board's records and the corporation must maintain those records in accordance with the guidelines of the Department of State.[31]
- The department may delegate to the corporation the authority to issue emergency suspension or restriction orders.
- The board must provide by rule for the security of licensure examinations, and that there is an appropriate level of monitoring during licensure examinations.[32]

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[22] Section 455.32(6)(g), F.S.
[23] Section 455.32(6)(h), F.S.
[24] Section 455.32(14)(b), F.S.
[25] Section 455.32(6)(h), F.S. Section 455.209(1), F.S., provides that the Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform the member's official duties, or commission of a felony.
[26] Section 455.32(6)(i), F.S.
[27] Section 455.32(6)(j), F.S.
[28] Section 455.32(6)(k), F.S.
[29] Section 455.32(6)(m), F.S.
[30] Section 455.32(6)(n), F.S.
[31] Section 455.32(12), F.S.
[32] Section 455.32(13), F.S.

Section 455.32(6)(o), F.S., substantively maintains the reporting requirements in the current s. 455.32(3)(f), F.S., which requires that the corporation provide the department with a report of its activities on or before October 1 of each year, except that it adds a reporting requirement for the number of license renewals.

The department must annually certify that the corporation is complying with the terms of the contract. As part of the annual certification, s. 455.32(14)(e), F.S., expands upon the annual reporting requirement in the current s. 455.32(10), F.S., to require the department to make quarterly assessments of the corporations compliance with the contract. The contract must provide methods and mechanisms to resolve any noncompliance, including termination of the contract.

Section 455.32(14)(h), F.S., expands upon the current s. 455.32(6), F.S., to provide for the return of records, monies, properties held in trust, and data by the corporation to the department in the event the corporation is no longer approved to operate.

Section 455.32(14)(i), F.S., requires that the corporation must secure and maintain liability insurance coverages in an amount approved by the department. The corporation would also be liable for any deductible. A violation of this paragraph is grounds for terminating the contract.

Additionally, the bill requires that the corporation pay the department for the following costs:

- All costs of representation by the board's counsel, including salary, benefits and travel expenses. The board, in lieu of the department, must retain the board counsel.[33]
- All costs incurred for the Division of Administrative Hearings of the Department of Management Services, and any other costs for the use of state services.[34]
- All direct and indirect costs associated with monitoring the contract.[35]

The provisions from the bill are substantively comparable to the provisions of the Florida Engineers Management Corporation Act, s. 471.038, F.S. However, s. 471.038, F.S., does not:

- Have a five member board. The Florida Engineers Management Corporation has a seven member board.
- Define the term "performance standards and measurable outcomes."
- Require a needs assessment as a requisite to privatization.
- Provide that the corporation's staff may be considered state employees or state officers for the purposes of part III of ch. 112, F.S.
- Require department approval of the corporation's bylaws and articles of incorporation.
- Require the corporation to keep financial and statistical information as necessary to disclose the financial condition and operation of the corporation.

[33] Section 455.32(14)(j), F.S.
[34] Section 455.32(14)(k), F.S.
[35] Section 455.32(14)(l), F.S.

- Provide for quarterly assessments of the corporation's compliance with the contract.
- Explicitly require the corporation to comply with the performance standards and measurable data developed by the corporation and department.

Section 2. The bill amends s. 455.2177, F.S., to delete the DBPR's authority to privatize continuing education monitoring, including the provisions in subsection (2) that establish detailed requirements governing private providers of such monitoring. The bill also deletes the administrative fine limitations for failure to satisfy a continuing education requirement. The bill provides that the department may refuse a licensee's renewal until all applicable continuing education requirements have been satisfied, and provides that the department is not precluded from imposing additional penalties authorized under the applicable practice act or rules of each profession.

The committee substitute continues to require the department to waive the continuing education requirement in s. 455.2177(4), F.S., for any profession that demonstrates that it has a program in place that measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance. Additionally, the bill permits the department to waive the monitoring system requirement if the system places an undue burden on the profession. The bill does not establish standards by which to measure whether the monitoring system places an undue burden on the profession.

Section 3. The bill amends s. 455.2178, F.S., to delete the requirements relating to vendors who monitor continuing education under s. 455.2177, F.S. This amendment conforms the provisions of this section to the amendments to s. 455.2177, F.S., which deletes the DBPR's authority to privatize continuing education monitoring.

The bill extends from five days to 30 calendar days the providers deadline for electronically submitting to the department information about a licensee's completion of a course. If the licensee's renewal date is within 30 days of the course completion, the information must be submitted to the department before the renewal date. The bill provides that these reporting requirements do not apply if the monitoring requirement is waived pursuant to s. 455.2177, F.S.

In addition to its current authority to revoke its approval of a continuing education provider, the bill amends s. 455.2178(4), F.S., to authorize a fine or suspension and deletes the authority to "immediately" revoke the approval of the provider for failure to comply with its duties under this section. The bill limits the fine that may be imposed to $500, and requires that investigations and prosecutions of violations must be conducted pursuant to s. 455.225, F.S., which provides the procedures for disciplinary proceedings for each board shall be within the jurisdiction of the department.

Section 4. The bill amends s. 455.2179, F.S., to provide for department approval of continuing education courses. The bill also deletes the provision in s. 455.2179(1), F.S. that provides that an approval of a continuing education provider without a four-year time limitation may remain in effect until July 1, 2001, unless earlier replaced by an approval that includes such a time limitation. In its place the bill provides that the approval may remain in effect pursuant to the applicable limitation in the practice act or rules of the profession.

The bill limits the fine for failure to provide appropriate continuing education services that conform to the approved course material to $500. The bill also requires that investigations and prosecutions of violations must be conducted pursuant to s. 455.225, F.S.

The bill provides that postlicensure continuing education courses are subject to the reporting, monitoring, and compliance requirements of this section and ss. 455.2177 and 455.2178, F.S.

Section 5. The bill amends s. 455.2281, F.S., to delete the requirement that the department credit to each profession revenues received from fines collected under s. 455.2177, F.S.

Section 6. Deletes obsolete language.

Section 7. This bill would take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

On page 13, lines 3 through 16, the bill provides that three public records exemptions that currently apply to the department or a board ". . . shall apply to records held by the corporation."[36] If the intent is to ensure that these confidential and exempt records retain their confidential and exempt status when in the hands of a corporation, it would be clearer to state that a record that is confidential and exempt pursuant to ss. 455.217, 455.225, and 455.229, F.S., retains its confidential and exempt status when held by a corporation and that a corporation that receives such information must maintain the confidential and exempt status of that information.

If the intention of the provision is to include other records of the corporation in the exemption, or to exempt meetings of the corporation, that could be considered an expansion of the exemption. An expansion of an exemption should be created in a separate bill to meet the requirements of Article I, s. 24 of the State Constitution.

The bill reiterates that the department and the board ". . . shall have access to all records of the corporation *as necessary to exercise their authority to approve and supervise the contract.*" The records of the corporation, however, are explicitly stated to be public records on page 13, lines 3-5. Stating that the department and board may have access *as necessary to exercise their authority to approve and supervise the contract* appears to be

[36] Section 455.217, F.S., creates a public meetings exemption for the department, the board, or commission, for the purpose of creating or reviewing licensure examination questions. Section 455.225, F.S., creates an exemption in the department for a report of a case that is dismissed prior to a finding of probable cause. Section 455.229, F.S., makes confidential and exempt certain financial, medical and other information required by the department and explicitly permits only the department, a board, or staff of same to have access to such information.

a limitation on access as it states a narrower basis for access than what is authorized under the State Constitution. This provision, however, will not actually limit access as it is not created as an exemption. It should be also noted that the Auditor General and the OPPAGA already have access to confidential and exempt information in the performance of their duties and that reiteration of that authority is unnecessary.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, the fiscal impact of privatization can only be determined when the privatization of a particular profession is proposed. The OPPAGA study of the Florida Engineers Management Corporation determined that regulatory costs may increase initially due to the economies of scale for the board that chooses to privatize and for the remaining boards within the department. However, OPPAGA also found that regulatory costs may stabilize after the first year.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Expanded definition of "board." - The bill defines "board" to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. This definition is considerably broader than the definition for board in s. 455.01(1), F.S. Section 455.01(1), F.S., defines "board" to mean:

> . . . any board or commission or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

[37] OPPAGA, *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report NO. 02-38, June 2002.

It isn't clear why this expanded definition is necessary, particularly in the case of councils. Councils are advisory bodies only and, as such, do not perform the types of executive functions that may be performed by boards and commissions.

Section 20.03(7), F.S., defines "council" or "advisory council" to mean

> . . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.03(10), F.S., defines "commission" to mean

> . . . unless otherwise required by the State Constitution . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03(12), F.S., defines "board of trustees" to mean

> . . . except with reference to the board created in chapter 253, means a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.

Corporate powers. - The bill states that the corporation has specific powers. For example, on page 4, line 29, the bill states ". . . [a]ny such corporation may hire staff as necessary to carry out its functions." Further, on page 8, line 27, ". . . [t]he corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section. As the bill provides that corporation must be a Florida nonprofit corporation, ch. 617, F.S., already establishes the powers of a nonprofit corporation. Reiterating corporate powers that are generally provided is unnecessary and could appear to limit the corporation's powers because "the specific controls the general" and, by specifically stating which powers the corporation is granted, it could appear that this section is a limitation on ch. 617, F.S. It is generally preferable to designate those general corporate powers that the Legislature *does not want* the corporation to exercise instead of restating those that it already has.

VIII. Amendments:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1104

SPONSOR: Comprehensive Planning Committee, Natural Resources Committee, and Senator Dockery

SUBJECT: Water Resources

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Herrin	Yeatman	CP	Fav/CS
3.	DeLoach	Hayes	AGG	
4.			AP	
5.				
6.				

I. Summary:

This committee substitute for the committee substitute (CS) requires local governments to address the water supply sources necessary to meet and achieve existing and projected water use demand in local comprehensive plans. The date by which certain elements of a local comprehensive plan are required to consider regional water supply plans is extended to accommodate the update of those regional water supply plans. At the option of a local government, water management districts (districts) are authorized to provide electronic notice of consumptive use permit applications.

Each district governing board is authorized to adopt rules to identify preferred water supply sources which can be used to provide substantial new water supplies to meet existing and reasonably anticipated water needs within a water supply planning region. The rules must identify the source of the water and assess the water the source is projected to produce. The use of a preferred water supply source is subject to the "three-prong" test provisions provided in current law, except that the use of a preferred water supply source will be a factor considered when determining whether the applicant's proposed use is consistent with the public interest.[1] Consumptive use permits issued for the use of a preferred water supply source are valid for at least a 20-year period. This CS provides that permits issued for the use of water from preferred water supply sources are not exempt from complying with provisions of law requiring the use of local water sources first. The provisions of the CS may not be construed as requiring a permit issued for a non preferred water supply source to be issued for a period of less than 20 years. Also, it specifies that the use of a preferred water supply source is not required, nor is the use of a nonpreferred water supply source either restricted or prohibited.

[1] Section 373.223(1), F.S.

This CS authorizes the districts to require the use of reclaimed water when it is environmentally, economically, and technically feasible to do so, and provides limitations on that authority. The districts are required to work with various entities to develop landscape irrigation and xeriscape design standards for new construction based on the irrigation code defined in the Florida Building Code, and are directed to work those entities to develop scientifically-based model guidelines for urban, commercial, and residential landscape irrigation.

This CS substantially amends ss. 163.3167, 163.3177, 373.116 and 373.250, Florida Statutes, and creates s. 373.2234 and a new section of the Florida Statutes.

II. Present Situation:

Water Supply Planning and Land Use Planning
Under the provisions of s. 163.3177(6)(c), F.S., and as part of a comprehensive plan, each local government is required to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sewer, solid waste, and aquifer recharge protection requirements. This element must also include a map that depicts any areas identified by a water management district as a prime recharge area for the Floridan and Biscayne Bay aquifers. In 2002, the Legislature enacted ch. 2002-296, Laws of Florida, to provide that by January 1, 2005, or the Evaluation and Appraisal Report (EAR) adoption deadline established for the local government, whichever date occurs first. This element must also consider regional water supply plans approved under the provisions of s. 373.0361, F.S., and must include a work plan, covering at least a 10-year planning period, for building water supply facilities identified as necessary to serve existing and new development.

Reuse and Reclaimed Water
Reuse is integral to water resource management and wastewater management in Florida. In 2002, about 467 domestic wastewater treatment facilities provided approximately 584 million gallons of reclaimed water per day for beneficial purposes. Reuse capacity represents about 52 percent of the total permitted domestic wastewater treatment capacity in Florida. Reclaimed water from these systems was used to irrigate approximately 141,000 residences, 426 golf courses, 436 parks, and 212 schools. Irrigation of these areas accessible to the public represented about 46 percent of the 584 million gallons per day of reclaimed water which was reused.[2]

Section 403.064, F.S., provides that the encouragement and promotion of water conservation and reuse of reclaimed water are state objectives and are in the public interest. Under current law, applicants for permits to construct or operate a wastewater treatment facility located within a water resource caution area must prepare a reuse feasibility study as part of the permit application process. These feasibility studies must be prepared in accordance with Department of Environmental Protection (DEP) guidelines. If a completed study indicates that reuse of reclaimed water is feasible, a permit applicant must implement reuse. A feasibility study

[2] 2002 Reuse Inventory, July 2003, Florida Department of Environmental Protection, Division of Water Resource Management.

completed under this requirement must be given significant consideration by a water management district under the consumptive use permitting process.

Water Resource Caution Areas

Water resource caution areas are areas within the boundaries of a water management district where the district has identified critical water supply problems, or where the district projects critical water supply problems within a 20-year planning period. Water resource caution areas are identified and designated under the provisions of ch. 62-40, Florida Administrative Code. Four of the five water management districts have designated water resource caution areas within their boundaries. The most well known of these is the Southern Water Use Caution Area, also known as the SWUCA, located in the southern portion of the Southwest Florida Water Management District.

"Three-prong test" - consumptive use permits

As a condition of obtaining a consumptive use permit under the provisions of s. 373.223(1), F.S., permit applicants must establish that the proposed use meets three requirements:

- The proposed use must be a reasonable-beneficial use meaning that the water will be used in a quantity as is necessary for economic and efficient use for a purpose and manner that is reasonable and consistent with the public interest;
- The proposed use will not interfere with any presently existing legal use of water; and
- The proposed use is consistent with the public interest.

These three requirements are commonly referred to as the "three-prong test."

Florida Water Conservation Initiative

The Florida Water Conservation Initiative, started more than three years ago, represents the efforts of the DEP, the five water management districts, the Department of Agriculture and Consumer Services, the Public Service Commission, and individuals representing all facets of water users or producers. Six work groups were created and in April, 2002, the final initiative was issued with recommendations to assist in identifying and prioritizing changes that could result in the statewide conservation of water. With regard to landscaping, the Florida Water Conservation Initiative recommended the design and adoption of state irrigation design and installation standards, including the expansion and coordination of current landscaping education and outreach programs, and the establishment of statewide training and certification programs.

III. Effect of Proposed Changes:

Section 1. Creates subsection (13) of s. 163.3167, F.S., to require that in a local government comprehensive plan, each local government shall address the water supply sources necessary to meet and achieve the existing and projected water use demand for the established planning period, considering an applicable regional water supply plan developed under s. 373.0361, F.S.

Section 2. Amends s. 163.3177, F.S., to extend the date by which a local comprehensive plan general sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer recharge element must consider a regional water supply plan to accommodate regional water supply plan updates scheduled for completion in 2006.

Section 3. Amends s. 373.116, F.S., to allow the districts to electronically mail notices of consumptive use permit applications to a county or appropriate city government at the option of that county or city government.

Section 4. Creates s. 373.2234, F.S., relating to preferred water supply sources, to provide the following:

- The governing boards of the water management districts are authorized to adopt rules to identify preferred water supply sources for which there is sufficient data to establish that the preferred source can be used as a substantial new water supply for existing and reasonably anticipated future water needs.
- Authorizes the use of preferred water supply sources in water supply planning regions identified pursuant to s. 373.0361(1), F.S.
- Preferred water supply sources must sustain the existing water resources and related natural systems in the water supply planning region.
- Rules identifying preferred water supply sources must at least contain a description of the preferred source and assess the water the source is projected to produce.
- The proposed use of a preferred water supply source is subject to the provisions of s. 373.223 (1), F.S.
- The use of a preferred water supply source must be considered when determining whether an applicant's proposed use of water is consistent with the public interest.
- Consumptive use permits issued for the use of preferred water supply source must be issued for at least a 20-year period.
- The use of nonpreferred water supply sources does not require the issuance of a permit for less than 20 years or imply that the nonpreferred water supply sources are inconsistent with the "public interest" requirements of s. 373.223 (1), F.S.
- Consumptive use permits issued for the use of a preferred water supply source are not exempt from provisions of law governing the use of local water sources first.
- Provisions of this act may not be construed to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the water management districts to implement this act must state the same.

Section 5. Amends s. 373.250, F.S., to provide that a water management district may require the use of reclaimed water in lieu of surface water or ground water when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible. Provides that a water management district is not authorized to require that a reclaimed water provider redirect reclaimed water from one user to another, or require that uncommitted water be provided to a specific user if the reclaimed water provider expects to use that water, or expects to provide it to a different user within a reasonable amount of time.

Section 6. Creates a new section of Florida Statutes to regulate Landscape Irrigation Design. Establishes legislative findings that multiple areas of the state have been identified as water resource caution areas, indicating that water demand will exceed available water supply in the near future, and that water conservation is one of the mechanisms by which future water demand will be met. Provides legislative findings that landscape irrigation comprises a significant portion of water use. Establishes the Legislature's intent to improve landscape irrigation water use efficiency. Directs the water management districts to work with various entities to develop

landscape irrigation and xeriscape design standards for new construction which incorporate a landscape irrigation system and to develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation. These landscape and irrigation design standards must be based on the irrigation code defined in the Florida Building Code.

Local governments are required to use the standards and guidelines when developing landscape irrigation and xeriscape ordinances. Provides that every 5 years, specified agencies and entities will review the model guidelines and standards to determine whether new research findings require a change or modification of the guidelines.

Section 7. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Initial costs to the private sector related to more stringent landscaping irrigation and xeriscape design standards for new construction imposed by a local government under the provisions of this bill may be offset by cost savings resulting from increased efficiencies in water use.

C. Government Sector Impact:

Local Governments
Local governments may see some increased costs related to provisions of the bill which require local governments to address the water supply projects necessary to meet and achieve existing and projected water use over the established planning period in their comprehensive plans.

Water Management Districts
The water management districts will incur some costs associated with rules identifying preferred water supply sources. Also, the districts must work with specified entities to develop landscape and xeriscape design standards for new construction and develop scientifically-based guidelines for urban, commercial, and residential landscape irrigation. Under the terms of this CS, the districts, along with other agencies and specified entities, must review these guidelines and standards every 5 years. The fiscal impact of these provisions has been reported as follows:

South Florida Water Management District – Minimal increase in workload and cost related to landscape irrigation and xeriscape design standards and water supply facilities work plan update.
St. Johns River Water Management District – Estimated cost to the district for the Landscape Irrigation and Xeriscape Design Standards provision is approximately $411,000.
Northwest Florida Water Management District – No significant fiscal impact.
Suwannee River Water Management District – Estimated cost is approximately $75,000 and one position for the landscape irrigation and xeriscape design standards provision.
Southwest Florida Water Management District – Estimated cost has not been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. CS for CS for SB 1104

Amendment No. 1 082790

04 APR -7 PM 3:10

CHAMBER ACTION

Senate | House

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Senator Dockery moved the following amendment:

Senate Amendment

On page 4, line 31, delete that line

and insert:

a preferred water supply source must be granted, when requested by the applicant, for at least a

APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Charlie Clary, Chair

Additional Amendments Packet

Tuesday, April 13, 2004
9:15 a.m. – 11:15 a.m.
301 Capitol

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

Bill No. CS for CS for SB 2954

SENATE APPROPRIATIONS
Amendment No. A1 to A1 960592

04 APR 12 PM 5:04

CHAMBER ACTION

Senate | House

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Consideration of this amendment requires a 2/3 vote of members present

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Senator Dockery moved the following **amendment to amendment** (282060):

Senate Amendment

On page 1, line 20, after the word conducting

insert: regulatory,

Bill No. CS for CS for SB 2954

Amendment No. 2 055394

CHAMBER ACTION

Senate | House

Not timely filed pursuant to the 24-hour policy, but meets the 2-hour amendment deadline per Senate Rule 2.39

Senator Dockery moved the following amendment:

Senate Amendment (with title amendment)

On page 8, line 5, through page 9, line 14, delete those lines

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 16-17, delete those lines

and insert:

its first meeting;

Bill No. CS for CS for SB 2954

Amendment No. 3


981752

CHAMBER ACTION

Senate

House

04 APR 12 PM 3:38

SENATE APPROPRIATIONS

SENT TO CHAIRMAN

STAFF DIR. STAFF

Not timely filed pursuant to the 24-hour policy, but meets the 2-hour amendment deadline per Senate Rule 2.39

Senator Dockery moved the following amendment:

Senate Amendment

On page 10, lines 7 through 14, delete those lines

and insert:

(5) "Minor violation" means a violation of a specific state or federal statute or rule that does not result in economic or physical harm to any person recruited, transported, supplied or hired by a farm labor contractor or create a significant threat of such harm.

(6) "Major violation" means a violation of a specific state or federal statute or rule that results in economic or physical harm to any person recruited, transported, supplied or hired by a farm labor contractor or creates a significant threat of such harm.

Bill No. CS for CS for SB 2954

Amendment No. 4 585176

04 APR 12 PM 3:38

CHAMBER ACTION

Senate | House

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Not timely filed pursuant to the 24-hour policy, but meets the 2-hour amendment deadline per Senate Rule 2.39

Senator Dockery moved the following amendment:

Senate Amendment

On page 18, lines 3 through 22, delete those lines

and insert:

(6) A farm labor contractor who commits a minor violation of this part shall be issued a warning for the first violation. A civil penalty in increments of $250 may be assessed for each successive violation of a specific statute or rule of this part up to a maximum of $2,500.

(7) A farm labor contractor who commits a major violation of a specific statute or rule of this part shall be assessed a civil money penalty of up to $2,500 in accordance with the criteria established by the department pursuant to s. 450.38.

Bill No. CS for CS for SB 160

Amendment No. 6 222484

CHAMBER ACTION

04 APR 12 PM 3:01

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

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Senator Dockery moved the following amendment:

Senate Amendment

On page 35, line 6, delete "since"

and insert: as long as

Bill No. SB 338

Amendment No. 1

430902

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 23 and 24,

insert:

Section 2. Liability protection.--A unit of state or local government may not be held liable for implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation, gift, or foreclosure, unless the state or the local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

(1) When a property, including a brownfield site, escheats to a county, the county is not subject to any liability imposed by chapter 376, Florida Statutes, or chapter 403, Florida Statutes, for preexisting soil or groundwater

contamination due solely to its ownership. However, this subsection does not affect the rights or liabilities of any past or future governmental entity for the results of its actions that create or exacerbate a pollution source.

(2) The county and the Department of Environmental Protection may enter into a written agreement for the performance, funding, and reimbursement of the investigative and remedial acts necessary for a property that escheats to the county.

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 7, following the semicolon

insert:

providing protection from liability on behalf of the state or a local unit of government for taking corrective action at a contaminated site as a result of involuntary ownership or due to ownership resulting from donation, gift, or foreclosure; providing for a county and the Department of Environmental Protection to agree to investigate and remedy conditions on a site that escheats to the county;

Bill No. CS for SB 2822

Amendment No. 1 963380

CHAMBER ACTION

04 APR 12 PM 5:44

Senate | House

SENT TO: CHAIRMAN ____
STAFF DIR. ____ STAFF ____

Consideration of this amendment requires a 2/3 vote of members present

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Senator Dockery moved the following amendment:

Senate Amendment

On page 4, line 11, delete "Each"

and insert: Beginning September 1, 2005, each

Bill No. CS for SB 2822

Amendment No. 2 241336

CHAMBER ACTION

Senate	House
	Consideration of this amendment requires a 2/3 vote of members present

Senator Dockery moved the following amendment:

Senate Amendment (with title amendment)

On page 5, lines 17-26, delete those lines

and insert:

Section 5. Paragraphs (f), (g), and (h) are added to subsection (1) of section 493.6202, Florida Statutes, to read:

493.6202 Fees.--

(1) The department shall establish by rule examination and biennial license fees, which shall not exceed the following:

(f) Fee for the examination for private investigator: $100.

(g) Fee for the examination for private investigator intern: $100.

(h) Fee for provider approval: $200.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Bill No. CS for SB 2822
Amendment No. 2 241336

On page 1, line 23, after "examination"

insert:
and application

Bill No. CS for SB 2822

Amendment No. 3 665488

CHAMBER ACTION

Senate House

04 APR 12 PM 5:

SEN TC: CHAIRMAN
STAFF DIR. STAFF

Consideration of this amendment requires a 2/3 vote of members present

Senator Dockery moved the following amendment:

Senate Amendment

On page 7, line 11, delete "July 1, 2004"

and insert: March 1, 2005

Bill No. CS for SB 2822

SENATE APPROPRIATIONS
Amendment No. 4 605974

04 APR 12 PM 5:41

CHAMBER ACTION

Senate | House

SENT TO: CHAIRMAN
STAFF DIR. STAFF

Consideration of this amendment requires a 2/3 vote of members present

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Senator Dockery moved the following amendment:

Senate Amendment

On page 7, line 13, delete "subsection (4)"

and insert: paragraphs (4)(a) and (b)

Bill No. CS for SB 2822

Amendment No. 5 333650

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

Senator Dockery moved the following amendment:

Senate Amendment

On page 7, line 29, delete "July 1, 2004"

and insert: September 1, 2005